TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 38

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
APPELLANTS
vs.
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY.

No. 39

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.,
APPELLANT
vs.
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

Filed March 29, 1950.

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1 (Caption Omitted)

4 In the District Court of the United States
For the Northern District of Texas,
Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
PETITIONER
v.
THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Complaint—Filed July 14, 1949

To the Judges of the District Court of the United States in and for the Northern District of Texas, Dallas Division:

Now comes The Texas and Pacific Motor Transport Company, a corporation, Petitioner, complaining of The United States of America and Interstate Commerce Commission, Defendants, and alleges:

I. PARTIES, JURISDICTION AND VENUE

Your Petitioner, The Texas and Pacific Motor Transport Company, is a corporation created and existing under and by virtue of the laws of the State of Delaware, and it is now and was at all times pertinent hereto doing busi-
5 ness under lawful permits in the States of Texas, Louisiana and New Mexico. Petitioner maintains its principal office and place of business in, and is a resident of, Dallas, Dallas County, Texas, which is within the Northern District of Texas, Dallas Division, of this Honorable Court. Therefore, this suit is brought in this District and Division by virtue of 28 U. S. C. A., Section 1398. This action is brought by Petitioner against Defendants to enjoin, set aside, annul and suspend the report and order of Division 5 of the Interstate Commerce Commission dated January 22, 1948, in its certain proceedings in the Interstate Commerce Commission's Docket No. MC-50544, and various sub-numbers, hereinafter more fully described, as well as the order of the entire Interstate Commerce Commission dated May 9, 1949, overruling Petitioner's petition for rehearing and reconsideration, thereby constituting said order of January 22, 1948, the final order of the Commission. Such action is authorized, and this Honorable Court has jurisdiction herein, by virtue of Title 49 U. S. C. A., Sections 17(9) and 305(g); Title 28 U. S. C. A., Sections 1336, 1398, 2284, 2321, 2322, 2324 and 2325, such other Federal Statutes

as are applicable, and the Fifth Amendment to the Constitution of The United States. The jurisdiction of this Court rests upon the aforesaid statutes and provisions of the Federal Constitution, as well as its general equity jurisdiction. The United States of America and Interstate Commerce Commission are made Defendants herein by authority of said statutes. Service of process herein may be had in accordance with Paragraph 2321, Title 28 U. S. C. A.

6 II. OWNERSHIP, CORPORATE STATUS AND OPERATIONS OF PETITIONER

The entire capital stock of The Texas and Pacific Motor Transport Company is owned by The Texas and Pacific Railway Company (hereinafter designated "Railway"), a railroad corporation created and existing by virtue of an Act of Congress.

PETITIONER, The Texas and Pacific Motor Transport Company (hereinafter referred to as "Transport Company" or "Transport"), is authorized by its Articles of Incorporation to engage in the business of a common carrier by motor vehicle, or by any means whatsoever, and partly by one means of transportation and partly by another, and by arrangement or contract with other common carriers it may lease, contract with and otherwise deal in truck, bus, stage, or other transportation lines and systems. For many years it has engaged in the business of a common carrier, subject to the provisions of the Interstate Commerce Act, as amended. It now operates, and has for many years operated, as a common carrier over the highways in interstate and intrastate commerce in the States of Texas and Louisiana and in interstate commerce in New Mexico. Transport Company has, at all times pertinent hereto, operated its intrastate business under and by virtue of common carrier certificates issued by the States of Texas and Louisiana. Transport Company does not operate intrastate in the State of New Mexico.

Transport Company has engaged in interstate business in the States of Texas, Louisiana and New Mexico
7 under and by virtue of certain certificates, acquired both by purchase and original application, issued by the Interstate Commerce Commission from time to time, which certificates are referred to in more detail hereinafter.

Subsequent to the acquisition by Transport Company of its authorization to engage in interstate and intrastate common carrier operations, it has invested large sums of money to promote such business. In this connection, Transport Company shows to the Court that the cost of acquiring the certificates authorized by the Interstate Commerce Commis-

sion amounted to a total sum of $96,674.18. In addition to this element of initial cost, Transport Company has invested heavily in equipment and other transportation facilities necessary to the proper maintenance and prosecution of its common carrier business, the present total net book value investment therein being $270,257.80, and the present fair and reasonable value thereof is not less than said amount. Transport Company is at present earning gross freight revenues in the approximate sum of $20,000.00 per month from interstate operations and approximately $150,000.00 per month from intrastate operations.

III. Operations of Transport Company Prior to 1936

In 1929, to meet highway competition, Transport Company was organized to handle all less-than-carload freight shipments, hereinafter referred to as "merchandise traffic," to, from and between stations on the line of Railway. Unlike Railway, the competitive motor carriers did not, as a rule, maintain local agency stations at the communities served by them but found it more convenient in their operations to pick up and deliver shipments of merchandise traffic at the establishments from and to which they were consigned, while, at the same time, providing, in general, the same rates on such traffic as maintained by Railway between its respective local stations. Accordingly, beginning in 1929, Transport Company published station-to-station rates on said merchandise traffic between specified points served by Railway corresponding to those of the motor carriers, which rates included pick-up and delivery service provided by Transport Company. Such shipments were handled by Transport Company as a common carrier. Bills of lading were issued therefor by Transport Company in its own name, but the transportation thereof, except for the local pick-up and delivery service, was performed by Railway under contractual arrangements between it and Transport Company. However, in September, 1935 Transport inaugurated a common carrier over-the-road operation between Monahans, Texas and Lovington, New Mexico.

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IV. Operation of Transport Company Following Motor Carrier Act of 1935

Following the effective date of the Motor Carrier Act of 1935, Transport Company sought to obtain from the Interstate Commerce Commission the necessary authority for Transport Company to operate as a common carrier. This was accomplished by two means: (1) a

series of applications to the Interstate Commerce
9 Commission, seeking the issuance by it of certificates of public convenience and necessity, which would enable Transport to operate as a common carrier in interstate commerce, pursuant to the provisions of what is now Section 207 of the Interstate Commerce Act, Part II; and, (2) three applications filed and approved by Interstate Commerce Commission under the terms of Section 213 of the Motor Carrier Act of 1935 (now Section 5 of the Interstate Commerce Act, Part I) for the purchase and acquisition by Transport Company of routes and operating rights acquired and developed by other common carrier motor carriers long prior to the passage of the Motor Carrier Act of 1935. Operating rights so established prior to the passage of the Motor Carrier Act of 1935 are generally referred to as "grandfather" rights.

V. Issuance of Certificates by Interstate Commerce Commission

A. Certificates Acquired by Purchase.

By separate applications filed September 12, 1936, Transport Company sought authority, under Section 213 of the Motor Carrier Act of 1935, to purchase portions of the motor carrier operating rights of (1) W. A. Johnson, doing business as Johnson Motor Lines, and (2) Ft. Worth Warehouse & Storage Co., Inc. These applications were respectively docketed by the Commission as No. MC-F-107, Texas and Pacific Motor Transport Company—Purchase—W. A. Johnson, and No. MC-F-108, Texas and Pacific
10 Motor Transport Company—Purchase—Ft. Worth Warehouse & Storage Co., Inc. These applications jointly contemplated the acquisition by Transport Company, through purchase, of interstate common carrier operating rights held by the two named motor carriers, being the "grandfather" common carrier operating rights established by the vendors prior to the enactment of the Motor Carrier Act of 1935. Such rights sought to be purchased included interstate common carrier operating rights held by the two named motor carriers along the line of Railway between Dallas and Abilene, Texas, and between Abilene and Big Spring, Texas. Hearing on the two applications was held upon a consolidated record, since designated by the Commission as Sub-No. 5 and Sub-No. 6 to No. MC-50544. By its report and order of May 20, 1937, the Interstate Commerce Commission authorized the purchase by Transport Company of the aforesaid common carrier operating rights held by said vendors for a consideration

of $12,000.00 and $25,000.00, respectively, or a total consideration of $37,000.00. Thereafter, certificates were issued by the Interstate Commerce Commission to Transport Company covering said routes set out above.

By application filed with the Commission on July 17, 1937, Transport Company sought authority, under Section 213 of the Motor Carrier Act, 1935, to purchase the common carrier operating rights, being the "grandfather" rights, held by the Southern Transportation Company, a common carrier motor carrier extending along the line of Railway between Dallas and Wills Point, Texas, and between Gladewater, Texas, and Shreveport, Louisi-
11 ana. The Southern Transportation Company was the owner of such common carrier rights prior to the passage of the Motor Carrier Act of 1935 and, by virtue thereof, held rights under the "grandfather" clause of said Act. By its report and order of July 6, 1938, the Interstate Commerce Commission, after hearing, authorized Transport Company to acquire the aforesaid common carrier operating rights of the Southern Transportation Company along the routes aforesaid for a consideration of $50,000.00 and thereafter a certificate was issued to Transport Company conferring the operating rights between the points stated. The foregoing application was subsequently designated by the Commission as Sub-No. 8 to No. MC-50544.

Prior to Transport's several purchases of operating rights above described, W. A. Johnson, Forth Worth Warehouse & Storage Company, Inc. and Southern Transportation Company respectively had filed with the Commission applications for certificates on the basis of established highway common carrier motor carrier operations existing before passage of the Motor Carrier Act of 1935. Accordingly, each of Transport's said vendors asserted his or its "grandfather" rights under the terms of such Act. The Commission had not issued certificates on such applications at the time Transport purchased such rights and applied to the Commission for approval of its acquisition thereof, and the only certificates issued on said applications by W. A. Johnson, Fort Worth Warehouse & Storage Company, Inc. and Southern Transportation Company with respect to the routes here involved were those ultimately issued to Transport pursuant to the
12 Commission's approval of its said purchases; wherefore each of these three certificates conferred on Transport the so-called "grandfather" rights under the terms of said Act of 1935.

Each of said certificates so issued by the Interstate Commerce Commission to Transport Company pursuant to such purchases was made subject to the following conditions only:

"Applicant shall not serve or interchange traffic at any point not a station on a rail line of the Railway.

"The authority herein granted shall be subject to such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, train service of the Railway, and in order to insure that the service rendered shall not unduly restrain competition."

Transport Company shows to the Court that the routes covered by the three certificates acquired by purchase, as aforesaid, to-wit, Shreveport, Louisiana, to Gladewater, Texas; Wills Point, Texas, to Dallas, Texas; Dallas, Texas, to Abilene, Texas; and Abilene, Texas, to Big Springs, Texas, cover mileage approximately 20% of the total mileage served by Transport Company in all of its interstate operations. However, located along the routes of these particular certificates are such important distribution centers, shipping points, destinations and gateways as Dallas, Fort Worth, Abilene, Sweetwater and Big Spring, Texas and Shreveport, Louisiana; and all of the interstate traffic handled by Transport either originates or
13 terminates on, or moves over the routes covered by these particular certificates.

B. Certificates Acquired On a Showing of Public Convenience and Necessity under Sections 207 of the Motor Carrier Act of 1935 and Part II of the Interstate Commerce Act of 1940.

At various times following the enactment of the Motor Carrier Act of 1935, Transport Company filed applications with the Interstate Commerce Commission for the issuance of certificates of public convenience and necessity under the provisions of Section 207 of the Motor Carrier Act of 1935 and Section 207 of the Interstate Commerce Act, Part II, seeking permission to operate as a common carrier over the various routes designated in said applications.

As the applications were granted, various of the following numbered restrictions were imposed upon Transport Company's several certificates, as indicated in the following tabulation, by the numerals appearing in the column captioned "Restrictions":

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supple-

mental of, rail service of The Texas and Pacific Railway Company or, in certain cases of its subsidiary rail lines (or of Texas-New Mexico Railway Company), herein called the Railway.

2. Applicant shall not serve, or interchange traffic at any point not a station on a rail line of the Railway.

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to the Railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

14 3A. Shipments transported by applicant shall be limited to those which it receives from or delivers to the Railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

3B. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points or through, or to, or from more than one of said points: Ft. Worth, Texas, and Texarkana, Texas, Arkansas.

3C. No shipments shall be transported by applicant between any of the following points or through, or to, or from more than one of said points: El Paso and Pecos, Texas.

4. All contractual arrangements between applicant and the Railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and suitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

5A. The authority herein granted shall be subject to such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, train service of the Railway, and in order to insure that the service rendered shall not unduly restrain competition.

For convenience, the docket numbers, dates of application, routes, dates of certificates, and restrictions are set forth as follows:

Docket No.	Date of Application	Route	Date of Certificate	Restrictions
MC-50544 (Title Case)	1/16/36	Monahans, Tex.-Lovington, N. M.	10/10/41 5/31/39	1, 2, 4 and 5
Sub. 1	3/8/37	New Orleans, La.-Port Allen, La.; Donaldsonville, La.- Thibodaux, La.; Port Allen-Innis, La.; Innis-Torras, La.; Port Allen-New Roads, La.; Port Allen-Rosedale, La.; Innis-Longbridge, La.; Longbridge-Marksville-Alexandria, La.; Marksville-Bunkie, La.; New Roads-Livonia, La.; Livonia-Grosse Tete, La.; Livonia-Fordoche, La.; Lottie-Krotz Springs, La.; Krotz Springs-Lebeau, La.; Krotz Springs-Mecker, La.; Krotz Springs-Opelousas, La.; Opelousas-Ville Platte, La.; Opelousas-Eunice, La.; Lawtell-Alexandria, La.; Eunice-Turkey Creek, La.; Alexandria-Cypress, La.; Derry-Bermuda, La.; Cypress-Shreveport, La.; Robeline-Natchitoches, La. and Alexandria-Shreveport. All intermediate points on Railway.	10/21/41 Revised 8/ 2/48	1, 2, 3A, 4 and 5
Sub. 2	10/16/37	Wills Point-Gladewater, Texas	8/ 7/39 10/21/41 4/ 1/42	1, 2, 4 and 5
Sub. 3	10/23/37	Pecos-Big Spring, Texas	12/ 2/39 10/21/41	1, 2, 3A, 4 and 5
Sub. 4	10/29/37	Marshall, Texas-Texarkana, Texas-Arkansas	1/15/40 10/21/41	1, 2, 3A, 4 and 5
Sub. 7	12/20/38	Weatherford, Tex.-Mineral Wells, Tex.; a point 2½ miles south of Strawn	12/23/41	2 and 5A
Sub. 9	9/11/39	Mesquite-Forney, Texas	8/ 9/40	1, 2, 3, 4 and 5
Sub. 10	2/13/40	Big Spring, Tex.-Hobbs, N. M.	10/ 1/41	1, 2, 4 and 5
Sub. 11	9/21/40	Pecos-El Paso, Texas	5/ 7/42	1, 2, 3C, 4 and 5
Sub. 12	9/25/40	Texarkana, Tex. Ark.-Ft. Worth, Texas	5/ 4/42	1, 2, 3B and 5
Sub. 14	6/13/41	Ft. Worth-Bomber Plant and anchorage and dock space 6 and 9 miles	11/ 8/41	1, 4 and 5
Sub. 19	12/ 8/41	Aledo, Brazos, Santo, Gordon and Mingus, Texas	10/21/42	1, 2, 3, 4 and 5
Sub. 22	3/21/42	Dallas-Ft. Worth, Texas (Off Route Points)	9/12/42	2 and 5A

16 *C. All Common Carrier Certificates.*

Each of the sixteen certificates above designated (including both those covering rights purchased and those granted on Transport's original applications) was issued by the Interstate Commerce Commission as a common carrier certificate.

Each of the foregoing routes, acquired both by purchase and application, is delineated on the attached map, referred to as Exhibit "C."

Each of the foregoing certificates, including certificates acquired by purchase and those issued on Transport's original application of convenience and necessity, is affected by the orders of the Interstate Commerce Commission, dated January 22, 1948, and May 9, 1949, copies of which orders are attached hereto and marked Exhibit "A" and "B," respectively, and made a part of this petition as though copied fully at this point. [Since the temporary authority covered by No. MC-50544 (Sub-Nos. 21-TA, 24-TA and 30-TA), and listed in the report and order of January 22, 1948, has expired, those particular certificates will not be further mentioned herein.]

VI. Transport's Operations Under Earlier Interpretation of Rights and Conditions by Interstate Commerce Commission.

Acting upon the authority conferred upon it by virtue of the aforesaid common carrier certificates issued to it by the Commission, both by original application and purchase,

17 Transport Company engaged extensively in the handling of both interstate and intrastate shipments of merchandise traffic, both for its own account and in a coördinated service with Railway and Railway's rail subsidiaries, as well as in joint-line service in connection with other motor carrier common carriers with which it had interchange connections at points on the lines of Railway and Railway's rail subsidiaries. Pursuant to the mandate of Sections 216 and 217, Part II, of the Interstate Commerce Act and in conformity with the Interstate Commerce Commission's then interpretation of the meaning of the various restrictions set forth in the preceding paragraph, Transport Company became a party to motor carrier tariffs, published its own rates, as well as joint-line motor rates, and was participating in a tariff rule which permitted the substitution of rail service for motor carrier service. Furthermore, Transport Company entered into joint routes

and agreements for the division of rates with other common carrier motor carriers. Transport Company issued its own bills of lading and performed service for its own account as well as performing a substitute service for railroad freight. All of these operations were performed by Transport Company over a long period of time in reliance on previous written interpretations by the Interstate Commerce Commission relating to the scope of the restrictions imposed upon the various certificates described in the preceding paragraph. Said restrictions, as then interpreted by the Interstate Commerce Commission and as they were understood by Transport Company, did not restrict or limit Transport's rights to so conduct its business. Such operations, including interchange of traffic with other
18 motor carrier common carriers, publishing of rates, issuance of its own bills of lading and performance of service for its own account, as well as performing a substitute service for railroad freight, were carried on by Transport Company openly and with knowledge and acquiescence on the part of the Interstate Commerce Commission, and were matters of public and common knowledge.

VII. History of Various Interstate Commerce Commission Hearings and Reports Culminating in Restrictive Orders Herein Complained of

In a proceeding entitled "Substituted Freight Service," Ex Parte No. 129, the Interstate Commerce Commission, on its own motion, inaugurated an investigation into the practices of common carriers generally (not Transport Company specifically), in the substitution of motor vehicle service for rail or water service, or of rail or water service for motor vehicle service. By its report of July 25, 1939, 232 I. C. C. 683, the Interstate Commerce Commission reviewed the practices of the carriers generally in that regard and expressed its disapproval thereof in certain particulars. In the course of its opinion, the Interstate Commerce Commission *suggested* the publication of a rule in a directory or individual tariffs authorizing, unless otherwise directed by the shipper, the transportation of merchandise shipments in all-rail or joint motor-rail service at the option of the origin or destination carrier. Transport thereupon published such directory.

19 Thereafter, on April 19, 1940 the Commission entered an order withdrawing its permission for substituted service from those motor carriers whose certifi-

cates contained restrictions 1, 2 and 3 listed on page 10 hereof. The effective date of the last mentioned order was, by successive orders, extended to August 19, 1941. On July 7, 1941 the Secretary of the Commission issued notice that the effective date of the order would not be extended beyond August 19, 1941 unless the affected motor carriers took steps to have their operating rights determined by the Commission.

Following such notice Transport Company filed with the Interstate Commerce Commission a petition, dated August 7, 1941, requesting an order or instructions defining its rights under the restrictions and conditions contained in certain certificates held by it (not including, however, the certificates acquired by Transport Company by purchase), or for alternative relief. The Interstate Commerce Commission designated the petition as No. MC-50544, The Texas and Pacific Motor Transport Company Common Carrier Application, set it for hearing on February 11, 1942, and on January 21, 1943, issued a report (not an order) which contained, in part, the following findings:

> "We find that, to the extent petitioner holds certificates limiting the motor-vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is without authority to perform service under all-motor local and all-motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service.
>
> "No affirmative order will be entered at this time, but petitioner will be expected, within a reasonable time, after the service of this report, to bring its service and tariffs in line with the foregoing findings."

This was the first time that the Interstate Commerce Commission had placed such an interpretation upon the conditions and restrictions theretofore imposed upon the certificates issued to Transport Company. Such interpretation was contrary to the Commission's previous interpretations which had been relied upon by Transport Company in carrying on its business.

Carrying out this direction would have deprived Transport Company of its right to continue to operate as a common carrier motor carrier. It would have deprived Transport Company of its right to perform service with connecting motor carriers and to publish motor carrier

rates and to issue its own bills of lading. It would have restricted and confined Transport Company's operations to a very limited scope, which would have had the practical effect of destroying Transport Company's business, in interstate transportation.

Realizing the devastating effect the foregoing decision would have upon the service it had developed over the years, with the apparent sanction of the Interstate Commerce Commission, Transport Company and Railway, on or about May 20th, 1943, jointly filed with the Interstate Commerce Commission, in the proceedings herein before the Court for review, a petition entitled "For Reconsideration and Oral Argument; For Modification of Supplement No. 5 to Tariff Circular No. 20
21 and Specified Special Permission [to permit rail carrier participation in motor rates]; or for Further Hearing." In said petition the scope of the several common carrier certificates which had been issued to Transport Company was reviewed in considerable detail, and relief was requested, as outlined in the caption of the petition, including a plea for oral argument and, as an alternative, request for further hearing. The petition was denied by the entire Commission on February 14, 1944, but, on the same date, Division 5 of the Commission entered an order reopening the cases for further hearing. On February 21, 1944, the Commission, on its own motion, entered its order reopening the hearing, and included therein, *for the first time*, consideration of the three certificates acquired by Transport Company by purchase. Those certificates had not been the subject of inquiry by the Commission in the original hearing.

Shortly thereafter, about May, 1944, Railway was authorized by the Interstate Commerce Commission in some instances and in part only to become a party to Motor Carrier tariffs, pursuant to which, Railway proceeded to participate in certain motor carrier tariffs by including portions of its line of railroad in such motor carrier tariffs *(not including, however, those portions of the line paralleled by the routes covered in Transport Company's purchased certificates.)* Thereafter, on August 5, 1944, Transport Company, believing that limited participation by Railway in motor tariffs would enable it to continue its operations with some degree of efficiency, in spite of the interpretation contained in the
22 Commission's report of January 21, 1943, again petitioned the Commission, pointing out that Rail-

way had been granted a portion of the relief sought in its petition of May 20, 1943, that is, permission for Railway to become a party to certain motor carrier tariffs. It asked, therefore, that no further hearings be held; emphasizing that its request for further hearing had been an alternative plea only, in the event other relief sought should not be granted. This petition was denied by order dated August 30, 1944, and the proceedings were arbitrarily set for hearing before an examiner of the Interstate Commerce Commission at Dallas, Texas, on October 17, 1944.

Pursuant to such setting a hearing was held at Dallas, Texas on October 17, 1944 before one of the Commission's examiners, at which Transport, representatives of various other common carrier motor carriers and shipper interests were in attendance. All parties joined Transport in requesting that the hearing be abandoned. All parties joined Transport in announcing that none of them had any evidence to offer. Transport, joined by other parties present, inquired the purpose of the hearing and directed particular attention to the vagueness and insufficiency of such notice as was afforded by the orders setting the case for hearing. The examiner declined to abandon the hearing and called one of Transport's officers as a witness, tendering him to the parties for examination. All parties declined to examine the witness; whereupon the examiner proceeded to question the witness but did not develop any evidence not already of record before the Commission on previous
23 hearings, and such testimony was the only evidence adduced at the hearing. At the close of the examiner's interrogation of the single witness, all parties joined Transport in moving to strike the testimony, which motion the examiner overruled. The representatives of shipper interests participating in the hearing demanded additional notice and opportunity to be heard if the Commission proposed any changes in Transport's operations. Transport likewise requested such additional notice, and opportunity for presenting evidence at various points on its line if the Commission proposed any changes in its operations.

On the basis of this hearing, Division 5 of the Commission handed down its report and order of January 22, 1948, attached hereto as Exhibit "A." Transport timely filed its "Petition for Reconsideration by Entire Commission and for Vacation of Report and Order of Division 5 on Further Consideration of January 22, 1948, and for Oral Argument" which was denied by the entire Commission by order dated May 9, 1949, attached hereto as Exhibit "B."

The effective date of said order was originally fixed by the Commission as March 22, 1948, but by subsequent orders has been extended to August 4, 1949.

By its report and order of January 22, 1948, the Commission proposes to impose on Transport Company five restrictive conditions for uniform application in all of its operations under its several common carrier certificates listed in Paragraph V above, including those certificates covering "grandfather" rights purchased from others, viz:

"1. The service to be performed by applicant shall be limited to service which is auxiliary to, or
24 supplemental of, the train service of The Texas and Pacific Railway Company, The Weatherford, Mineral Wells and Northwestern Railway Company, or Texas-New Mexico Railway Company, and, between El Paso and Sierra Blanca, Texas, the train service of Texas and New Orleans Railroad Company, hereinafter called the Railways.

"2. Applicant shall not render any service to or from any point not a station on a rail line of the Railways.

"3. No shipments shall be transported by applicant between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Tex-arkana, Tex.-Ark., Fort Worth-Dallas (considered as one), Abilene, Monahans, and El Paso, Tex.

"4. All contractual arrangements between applicant and the Railways shall be reported to us and shall be subject to revision if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

"5. Such further specific conditions as in the future we may find necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, the train service of the Railways."

VIII. Purpose and Effect of Restrictions Now Ordered by the Commission

Transport Company has been and is conducting a common carrier motor carrier business pursuant to its own rates and tariffs lawfully published and filed with the Interstate Commerce Commission. By its report and order of January 22, 1948 and its order of May 9, 1949 the Commission holds that Transport may no longer publish, file and use its own rates and tariffs, may no longer

participate in motor carrier common carrier rates and tariffs (hence may no longer interchange traffic with other motor carrier common carriers) and may no longer issue its own bills of lading. The Commission holds that Transport may accept shipments only from specified railroads, and that such shipments must move on railroad billings and at rail rates. These holdings are not *prima facie* apparent in the wording of the five conditions above quoted from the Commission's order of January 22, 1948, but actually are implicit in Condition No. 1 thereof by reason of the interpretation placed by the Commission on the phrase "auxiliary to or supplemental of train service." As that phrase was used in the orders approving Transport's purchase of operating rights from others in 1937 and 1938 as well as in various subsequent orders granting certificates on Transport's applications, it was understood to be no more than a geographical restriction limiting the motor carrier common carrier service to those points served by Railway, and prior to 1943, the Interstate Commerce Commission had not placed a different interpretation on the meaning of the phrase. In its report of January 21, 1943, in part quoted above, Division 5 of the Commission elaborated on the implication of these words and converted the phrase to words of art, considerably expanding the restrictions on Transport's operating rights, and provoking the controversy now culminating in this suit. In its decision of April 11, 1949, in the matter of The Rock Island Motor Transit (etc.), No. MC-F-445, the entire Commission (with three commissioners dissenting) further elaborated on its evolutionary interpreta-
26 tion of the quoted phrase, and made it clear that it is the Commission's intent that Condition No. 1, ordered to apply on all of Transport's certificates enumerated in Paragraph V, shall have the effect above alleged. Condition No. 1 as now interpreted by the Interstate Commerce Commission, therefore, will destroy Transport's character as a common carrier in interstate commerce and will reduce it to the status of a contract carrier for a few specified shippers, utilizing predetermined rates fixed by others, viz., rail rates.

The imposition of the so-called "key points" by Condition No. 3 effectively disrupts the economy, continuity and efficiency of Transport's operations and breaks those operations into relatively small segments. In some instances Condition No. 3 precludes Transport from rendering service between points on the routes authorized by its certificates.

If Transport is required to move interstate traffic on rail rates only, forthwith it will be forced out of the interstate phase of its business. Rail rates are generally higher than common carrier motor carrier rates, wherefore Transport will be unable to compete with other common carrier motor carriers. A major portion of Transport's patrons ship both interstate and intrastate, and if Transport is precluded from handling the interstate business of such shippers, inevitably it will lose some of such shippers' intrastate business as well. It will suffer competitive disadvantage with resultant loss of business if, by imposition of key points, it is precluded from accepting ship-
27 ments to, and from serving points along its route which it has been authorized to serve by its said certificates. Further, observance of the key point restriction will increase handling costs, and will delay deliveries, subjecting Transport to both increased cost of operation and competitive disadvantage in expeditious delivery of shipments. If Transport is thus deprived of its right and duty to serve the public as a common carrier, and is burdened with such operational restrictions, its operations will be most seriously impaired. From the inception of its operations and until the Commission's orders of January 22, 1948 and May 9, 1949, by employing various operational expedients, Transport has been able to maintain a common carrier motor carrier operation in interstate commerce; but if the last mentioned orders of the Commission are allowed to stand, Transport can no longer do so.

IX. Particulars in Which the Commission's Orders are Unlawful

A.

The common carrier operating rights purchased by Transport from others with the Commission's approval constitute valuable property existing prior to the inception of the Commission's jurisdiction over motor carriers; and the action of the Commission in engrafting on the certificates evidencing such rights restrictive Conditions Nos. 1 and 3, destroying or materially diminishing the common carrier character of those rights, constitutes taking pri-
vate property for an alleged public purpose without
28 just compensation, contrary to the Fifth Amendment of the Constitution of the United States.

B.

The certificates issued to Transport on its original application constitute valuable property and franchise rights, and the Commission's present action thereon constitutes a taking of property for an alleged public purpose without just compensation, contrary to the Fifth Amendment of the Constitution of the United States, in the following respects:

(a) On those certificates limited at the time of issuance to service "auxiliary to and supplemental of train service," by redefining the quoted phrase so as now to prohibit Transport from exercising the rights and duties of a common carrier in tendering service to the public generally on its own contracts of shipment at its own published, reasonable and nondiscriminatory rates.

(b) By imposing on those certificates not so limited at the time of issuance Condition No. 1, interpreted so as to have the effect next above described.

(c) By imposing on those certificates which did not at the time of issuance contain it, the "key point" restriction (Condition No. 3.)

C.

The action of the Commission hereinabove detailed in modifying, restricting and materially diminishing the rights evidenced by said certificates substantially deprives Transport of the value thereof and constitutes taking its property without due process of law contrary to the Fifth Amendment of the Constitution of the United States.

D.

29 With respect to the certificates evidencing operating rights purchased from others, in now attempting to impose Conditions Nos. 1 and 3, the Commission has acted in excess of the jurisdiction and authority conferred on it by, and in contravention of the terms of Sections 206 (a) and 213 of the Motor Carrier Act of 1935 and Sections 206 (a) and 5 (2) of the Act of 1940.

E.

With respect to the certificates issued on Transport's original application, the conditions which the Commission seeks to impose, and particularly Nos. 1 and 3, are not authorized by Section 207 or any other portion of the Interstate Commerce Act; and the circumstance that Transport is owned by a railroad does not justify the imposition of such conditions.

F.

In differentiating between Transport and common carrier motor carriers not railroad owned as the basis for imposition of said conditions (particularly Nos. 1 and 3) the Commission's said orders of January 22, 1948 and May 9, 1949 constitute capricious discrimination unsupported by evidence or statutory authority and so injurious as to amount to a taking of property without due process of law.

G.

The Commission asserts that such discrimination is justified by the Act Declaring The National Transportation Policy (54 Stat. L. 899) but if that Act be so construed, then it is unconstitutional as an attempted delegation by Congress to an administrative body of a legislative function without sufficient standards by which the Commission is to be guided in exercising the supposed power.

H.

Transport Company is informed and, therefore, so avers that the Commission has issued to and there are now outstanding in the hands of other common carrier motor carriers of freight and passengers owned or controlled by railroads, common carrier certificates of public convenience and necessity, which do not contain restrictions similar to those contained in the subject order, and which permit unrestricted common carrier service by such companies; and, further, that there are no proceedings pending before the Commission to restrict such certificates in the manner here attempted. Such differentiation between Transport Company and other motor carriers of the same class (railroad controlled) is discrimination of such injurious character as to amount to a denial of due process of law, contrary to the terms of the Fifth Amendment to the Constitution of the United States of America.

I.

By imposing Condition No. 1 under its present definition, and by imposing Condition No. 3 on those certificates to which no "key point" restriction originally attached, the Commission has revoked or partially revoked Transport's said certificates, contrary to the provisions of Section 212 of the Interstate Commerce Act. In this connection Transport alleges that none of said con-

ditions was ordered to correct any clerical mistake or error in any previous order, or in the terms of the certificates, but they were imposed in order to effectuate a new policy without authority in law.

J.

In connection with the certificates evidencing rights purchased by Transport from others, necessarily the Commission under Section 5 (2) (b) of the Interstate Commerce Act originally found that Transport's operation as a common carrier motor carrier, unrestricted except as to routes and points to be served, was in the public interest and not restrictive of competition; and the Commission was without any new or additional evidence to justify its subsequent orders imposing restrictions (particularly Conditions Nos. 1 and 3); wherefore such orders are arbitrary, capricious, and unsupported by evidence.

K.

The record is void of evidence that Transport's operation as a common carrier motor carrier with usual common carrier rights and duties will not be in the public interest, or will be restrictive of competition, wherefore said orders are arbitrary, capricious and unsupported by evidence as to all of said certificates.

L.

Said orders of January 22, 1948 and May 9, 1949 deprive Transport of its right and duty under Sections 216 and 217 of Part II of the Interstate Commerce Act
32 of filing, publishing and maintaining rates and schedules as a common carrier by motor vehicle; said orders deprive Transport of the right to enter into joint rates with other motor carriers as permitted by said sections; said orders would permit Transport to enter into joint rates only with a few specified railroads; and, in effect, would fix Transport's rates without complying with the requirements of said Sections 216 and 217, and without benefit of any evidence.

X. Transport Will Suffer Irreparable Damage Unless Enforcement of Commission's Orders is Restrained.

Unless the Commission's orders of January 22, 1948 and May 9, 1949 are enjoined, set aside, annulled and suspended, Transport will be irreparably damaged. For reasons detailed above, enforcement of said orders forthwith

would deprive Transport of its revenues from interstate traffic and, eventually, of much of its revenues from intrastate traffic. On the basis of recent experience, Transport alleges that its interstate freight revenue which it would thus lose would amount to a sum in excess of $240,000.00 per year, or approximately $20,000.00 per month. Revenues from intrastate transportation which Transport eventually would lose are difficult to estimate with accuracy, but Transport alleges that the amount would be substantial. In addition to these losses of revenue, enforcement of the Commission's said orders would deprive Transport of the value of its investments in the certificates herein involved, aggregating $96,674.18. Additionally Transport
33 would be deprived of the value of a considerable portion of its physical property (consisting principally of vehicles, shop and service equipment and supplies) devoted to interstate transportation service of a present aggregate net value of approximately $25,000.00.

Operation of Transport's business in the manner in which it has been conducted has been profitable to Transport. For the year 1948 Transport realized a net operating profit, before taxes, of $118,808.06, and a net profit of $69,959.41. If the Commission's said orders are enforced, all profits of operation will be destroyed and the business will become a loss operation.

Enforcement of said orders likewise would entail a serious public loss, in that the public would be deprived of the services of a useful and widely patronized interstate common carrier in the territory through which Transport is now so authorized to operate.

Transport shows to the Court that there is no immediate necessity from the standpoint of either public or private interest for prompt enforcement of the Commission's said orders, and in this connection points out that the Commission has delayed for some ten years its attempt to impose on Transport the restrictive conditions herein complained of. Opposed to this circumstance, Transport shows that its revenue losses would be immediately attendant upon enforcement of said orders; and if and when the Court might thereafter determine the invalidity and un-
34 lawfulness of said orders, there would be no means by which Transport could recoup its losses suffered in the interval of enforcement.

Transport alleges that it has no plain, speedy, adequate or complete remedy at law, and that such irreparable damage can be avoided only by the Court's granting the relief herein sought.

XI. Prayer

Wherefore, Petitioner respectfully prays:

FIRST. That, immediately upon the filing hereof, or thereafter, as provided by law, and without the necessity of notice and hearing, a temporary restaining order be issued by this Honorable Court, restraining Defendants, The United States of America and Interstate Commerce Commission, from enforcing said orders of January 22, 1948, and May 9, 1949;

SECOND. In the alternative, if a temporary restraining order is not so issued without notice and hearing, Petitioner prays that, on due notice to the Defendants as provided by law, and in any event prior to August 4, 1949, a hearing shall be held and a temporary stay or suspension of said orders of the Interstate Commerce Commission of January 22, 1948, and May 9, 1949, be granted pending hearing and determination of Petitioner's application for interlocutory and permanent injunctions;

35 THIRD. That immediately upon the filing hereof the Honorable Judge of this Court shall notify the Chief Judge of the Court of Appeals for the Fifth Circuit, requesting that he designate two other Judges, at least one of whom shall be a Circuit Judge to serve as members of the Court to hear and determine this action.

FOURTH. That process issue herein against the Defendants, the United States of America and Interstate Commerce Commission as provided by law;

FIFTH. That, after not less than five days' notice to the Defendants, the Attorney General of the United States, and the United States Attorney for the Northern District of Texas, as provided by law, a hearing shall be held and an interlocutory injunction be issued staying and suspending said reports and orders of the Interstate Commerce Commission;

SIXTH. That, upon final hearing of this cause, as provided by law, a permanent injunction be issued decreeing that the reports and orders of the Interstate Commerce Commission herein complained of are null and void and are set aside, suspended and annulled, and that their enforcement, execution and operation shall forever be enjoined and that The United States of America and Interstate Commerce Commission forever be restrained from taking any steps or instituting or further prosecuting any proceedings to enforce said orders.

36 SEVENTH: In the alternative, that on final hearing a permanent injunction be issued declaring that insofar as said orders preclude Transport from filing, publishing and maintaining its own lawful rates, preclude Transport from interchanging traffic with other common carrier motor carriers, preclude Transport from accepting for itself under its own contracts of shipment traffic tendered by the public generally, preclude Transport from issuing its own bills of lading for traffic transported by it, and confine Transport to utilization of railroad rates, said orders of the Interstate Commerce Commission are void and are set aside; and that in imposing the so-called "key point" restrictions on Transport's certificates not originally so limited, said orders are void and are set aside; and that The United States of America and Interstate Commerce Commission be restrained from interpreting or enforcing said orders in such manner as will prohibit Transport from filing, publishing and maintaining its own lawful rates, from interchanging traffic with other common carriers, from issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment, or in such manner as to restrict Transport to rail rates; and that Defendants be restrained from prohibiting Transport from transporting traffic to, through, from or between any so-called "key points" on that part of its route covered by certificates to which no "key point" restrictions originally attached on issuance.

37 EIGHTH. That this Court grant to the Petitioner such other and further relief as by it may be deemed proper in the premises and for which it will ever pray.

Respectfully submitted,

J. T. Suggs,
J. T. Suggs,
D. L. Case,

Robert Thompson,
T. & P. Building,
Dallas, Texas.

John C. Robertson,
J. L. Lancaster, Jr.,
Claude Williams,
Republic Bank Building,
Dallas, Texas,
Attorneys for Petitioner.

By JOHN C. ROBERTSON,
Of Counsel.

Dated July 14, 1949.

38 *Duly sworn to by C. S. McDonald.*
Jurat omitted in printing.

39 *Exhibit "A" to Complaint,*

Interstate Commerce Commission

No. MC-50544[1]

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

COMMON CARRIER APPLICATION

SUBMITTED JULY 30, 1947. DECIDED JANUARY 22, 1948.

1. Upon further hearing in No. MC-50544 and certain sub-numbered proceedings, changes and modifications prescribed in the conditions contained in the certificates issued therein to applicant to insure that the service rendered shall be limited to that which is auxiliary to, or supplemental of, rail service. For prior reports see Appendix A hereto.

2. Issuance of amended certificates approved. Prior reports shown in appendix.

Appearances as shown in prior reports, and in addition:

Wilmer A. Hill, J. T. Suggs, D. L. Case, J. W. Riley, and Robert Thompson for applicant and the Texas and Pacific Railway Company.

Scott Daly for protestants in No. MC-50544 (Sub-No. 11).

Ed P. Byars, Ralph W. Currie, Frank C. Brooks, Robert J. McBride, Cecil A. Morgan, Frank H. Rawlings, W. M. Conway, J. P. McCluskey, Joe T. Steadman, W. N. Winchester, and H. Lauren Lewis for interveners.

40 REPORT OF THE COMMISSION ON FURTHER HEARING, DIVISION 5

Commissioners Lee, Rogers, and Patterson

By Division 5:

Exceptions were filed by applicant to the report proposed by the examiners, and intervener replied, and the parties

[1] This report also embraces the proceedings listed in Appendix A hereto.

have been heard in oral argument. Our conclusions differ somewhat from those recommended.

In the prior reports in these proceedings, applicant, a wholly owned subsidiary of The Texas and Pacific Railway Company (hereinafter called the Railway), was granted authority to conduct described operations in interstate or foreign commerce as a common carrier by motor vehicle of general commodities, in certain instances with exceptions, over an extensive system of regular routes, parallelling generally the Railway's lines or those of certain other rail carriers in Louisiana, Texas, Arkansas, and New Mexico. The routes, indicated generally in Appendix B, extend from New Orleans, La., on the east, to El Paso, Tex., and Lovington, N. Mex., on the west, a total distance of approximately 1,150 miles. Applicant has been issued 16 certificates each subjecting the operations it covers to certain of the conditions set forth in Appendix B.

The route between Pecos and El Paso, Tex., covered by certificate No. MC-50544 (Sub-No. 11), was reopened for further hearing upon petition of applicant to determine what modification, if any, should be made in the conditions prescribed in the prior report therein, 33 M. C. C. 38, and what, if any, authority should be granted with respect to the transportation of freight between El Paso and Sierra Blanca, Tex., for the Texas and New Orleans Railroad Company. Further hearing was held by a joint board and its recommended order, to which no exceptions were filed, was stayed by us.

Following the issuance of the authority set forth above, the title proceeding and eight of the sub-numbered proceedings[2] were the subject of further consideration and
41 report, 41 M. C. C. 721, wherein we more specifically defined and construed the operating rights authorized by the certificates theretofore issued. We there admonished applicant that in those instances where the certificates in question restricted the authorized service to that which is auxiliary to or supplemental of the rail service of the Railway, it was without authority to engage in motor carrier operations independent of and not connected with such rail service. Specifically, we found that, to the extent applicant holds certificates containing the described restriction, it may not perform all-motor service under all-motor local rates or all-motor joint rates with connecting motor

[2] No. MC-50544 (Sub-Nos. 1, 2, 3, 4, 7, 9, 10, and 11).

carriers, or substitute rail service for motor service; and that it may not properly be a party to tariffs containing all-motor rates or which provide for the substitution of rail for motor service. Applicant and the Railway thereupon filed a joint petition seeking reconsideration of these findings, oral argument, modification of our tariff regulations which prevent the Railway from participating in joint rates with independent motor carriers,[3] or in the alternative further hearing in each proceeding covered by the petition. Upon reconsideration of the records and of the petition, we reopened all of the proceedings embraced in this report for further hearing for the sole purpose of determining what, if any, changes or modifications should be made in the conditions attached to the 16 certificates and the three temporary authorities, and denied the petition in all other respects. Prior to the further hearing applicant and the Railway filed a second petition requesting that the further hearing be canceled on the ground that an order of this Commission entered May 18, 1944, subsequent to the filing of its petition for further hearing, allowed the Railway to become a party to the all-motor tariffs, thus meeting the principal request contained in their petition and obviating the necessity for further hearing. The petition also contained a request to withdraw No. MC-50544 (Sub-No. 11) from consideration in the further proceeding. This petition was denied and the further hearing, at which applicant,
42 the Railway, and a number of interveners appeared, was held. At the outset thereof applicant stated that it desired no change in the various conditions now attached to its operating authorities, but to the contrary wished them to remain in status quo. It was joined by several interveners in a motion for discontinuance of the further hearing, which was denied by the examiner. Applicant thereupon stated that it had no evidence to offer; and, while it made available its general freight agent for questioning by the examiner, it objected to all questions leading to the adduction of evidence through this witness. In addition to questions by the examiner, an intervener also questioned the witness with respect to certain portions of applicant's present operations.

The various certificates under consideration were issued to applicant pursuant to several individual applications filed under sections 207 or 5 (formerly 213) of the Inter-

[3] Rules 30, 107(a) and 107(b) of Supplement No. 5 to Tariff Circular No. 20.

state Commerce Act. These applications were filed over a period of years, and each covered but a limited segment of applicant's present system of routes. For instance, the title proceeding, the initial application, covered the route between Monahans, Tex., and Lovington. This was followed about a year later by the sub-number 1 proceeding covering the routes in Louisiana, hundreds of miles removed from and physically unconnected with the Monahans- Lovington route. Then came the application in the sub-number 2 proceeding covering the route between Wills Point and Gladewater, Tex. This route, more or less midway between the routes previously granted, was likewise physically isolated therefrom. The process of separate applications or purchases continued until ultimately the various segments were connected to form applicant's present system of connecting routes extending from New Orleans to Shreveport and Texarkana and thence westerly to El Paso. Because the applications were not considered as parts of an over-all scheme of establishing a connected system of routes, we attached to each certificate as it was granted only those conditions which we considered at the time to be necessary. In some instances we prescribed but two of the conditions, whereas in others we prescribed a form of each con-

43 dition. Without exception, however, we prescribed either condition 5 or 5A set forth in Appendix B by which we reserved the right in the future to impose such additional revised conditions as we might find necessary in order to restrict applicant's operation to a service auxiliary to or supplemental of rail service. There can be no doubt that under this reservation we may reëxamine the conditions prescribed in the various certificates in question and change, modify, or add to them to the extent we find necessary to the end indicated. *Interstate Commerce Commission v. Parker*, 326 U. S. 60. Although applicant desires no changes in the conditions, and certain interveners do not object to continuance of the present conditions, we are of the opinion that a reëxamination of the conditions in all of these proceedings is necessary in view of the extensive system of routes that has evolved from the several separate applications. The lack of uniformity in the conditions attached to the various segments of the routes has resulted not merely in past uncertainty on the part of applicant itself as to the nature of its authorized operations, but has also resulted in the performance by applicant of operations between Shreveport, La., and Gladewater, Tex., and be-

tween Wills Point and Big Springs, Tex., in its own name and on its own billing directly for the general public as an independent motor common carrier. Authority over these routes were acquired by purchase and are subject only to conditions 2 and 5A as set forth in Appendix B. The all-motor operations so conducted are contrary in our opinion to the national transportation policy and clearly show a need for reëxamination of the conditions in question.

Applicant argues that the notice setting the proceedings for further hearing did not inform it or the other parties of the nature of the issues to be met, or give them sufficient time to prepare to meet the issues; and that the hearing, in view of the request for its cancellation, was in the nature of an ex parte proceeding. We are not impressed with applicant's argument that it was unable to foresee the issues. The notice in question stated that the further hearing was for the purpose of determining what changes, if any, should be made in the conditions, and thus placed the conditions themselves in issue. One of these is condition 5 or 5A, which in itself was adequate notice to applicant and the other parties that the primary purpose of the further hearing would be to determine, as provided for in that condition, whether it is necessary to change or modify the existing conditions or to add others so as effectively to restrict applicant's operations to service which is auxiliary to or supplemental of rail service. Applicant was given the opportunity of presenting evidence to show that no need exists for a change in its present conditions; however, not only did it choose not to offer such evidence, but it objected to the receipt of any evidence with respect thereto. In the circumstances, the examiner properly denied its motion to discontinue the further hearing and to withdraw its witness, and properly overruled its objection to the adduction of testimony through such witness.

44

Condition 1.

This condition in general terms limits the character of service which may be performed to that which is auxiliary to or supplemental of the rail service of the Railway or of certain other named rail lines, and is attached to all of applicant's certificates except No. MC-50544 (Sub-Nos. 5, 6, 7, 8, and 22.) It is pursuant to these certificates that applicant has performed motor common carrier service in its own name independently of rail service between Shreveport and Gladewater and between Wills Point and Big

Spring. Applicant contends that to deny it the right to continue this independent service would unfairly deprive the public of the service it has been receiving, and would deprive applicant of a substantial part of the consideration it gave in purchasing these routes.[4] It alleges that interveners do not object to its continuing such independent operations; that, in fact, it was not organized for the purpose of performing only a substituted service; and that the long period of operation makes the insertion of this condition improper at this time. Certain interveners on oral argument contend, along the same line, that the condition in question would prejudicially affect the free competition now enjoyed by the public.

The entire Commission recently had occasion in *Rock Island Motor Transit—Purchase—White Line M. Freight*, 40 M. C. C. 457, to review at length and in the light of our experience to date in motor carrier regulation the subject of motor carrier operations by railroads. As shown by the report cited the Commission found no occasion to depart from what has consistently been our position that, except in very special circumstances not here present, railroads cannot consistently with the public interest and the national transportation policy be permitted to engage in motor carrier operations not auxiliary to or supplemental of their rail service. The following by the Commission is significant:

> It is our opinion, originally indicated in the *Kansas City Southern case*, 10 M. C. C. 221, 28 M. C. C. 5, and confirmed by nearly a decade of experience in motor-carrier regulations, that the preservation of the inherent advantages of motor-carrier service and of healthy competition between railroads and motor carriers and the promotion of economical and efficient transportation service by all modes of transportation and of sound conditions in the transportation and among the several carriers, in short the accomplishment of the purposes forming the national transportation policy, require that, *except where unusual circumstances prevail, every grant to a railroad or to a railroad affiliate of authority to operate as a common carrier by motor vehicle or to acquire such authority by purchase or otherwise should be so conditioned*

[4] The main routes only were purchased in No. MC-50544 (Sub-Nos. 5, 6, and 8.) No. MC-50544 (Sub-Nos. 7 and 22) were applications under Section 207.

as definitely to limit the future service by motor vehicle to that which is auxiliary to, or supplemental of, train service. [Emphasis supplied.]

In the finance proceedings in which the rights covered by the certificates in sub-numbers 5, 6, and 8 were acquired and in the section 207 proceedings in which the right covered by the certificates in sub-numbers 7 and 22
46 were granted, applicant's case was built in each instance around an emphasized need for a motor service with which rail service could be coördinated for the purpose of improving the rail service. In authorizing its purchase of those portions of the operating rights (1) of W. A. Johnson, doing business as Johnson Motor Lines, between Abilene and Big Spring, Tex., and (2) of Fort Worth Warehouse & Storage Company, Inc., between Dallas and Abilene and between Eastland, Ranger and Breckenridge, Tex., over regular routes in *Texas & Pacific Motor Transport Company—Purchase—W. A. Johnson*, 5 M. C. C. 89, this division stated at page 92 of the report:

> Evidence as to how these highway and railway operations may be coördinated is similar in character and leads to the same conclusions reached in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M. C. C. 101, 5 M. C. C. 9 and 49, wherein we approved acquisition of a truck line by a railroad subsidiary. We there indicated the character and scope of approved and disapproved operations.[5]

Again, in authorizing applicant to purchase the operating rights of Southern Transportation Company between Dallas and Wills Point and between Gladewater and Shreveport, over regular routes, in *Texas & Pacific Motor Transport Co.—Purchase—Southern*, 5 M. C. C. 653, it was stated:

> The proposed purchase is another step in the general plan of applicant and the railway toward the development of coördinated truck-and-rail service on merchandise freight in the entire territory served by the railway. The first step in that direction has been accomplished through authorization granted in *Texas & P. Motor Transport Co.—Purchase—Johnson, supra*,

[5] The decision in the *Barker case* stated: "Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the Railroad itself those which compete with an established motor carrier * * *. Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called station-to-station service."

as a result of which such service has been
47 inaugurated from Dallas west to Big Spring with beneficial results. The authority herein sought will provide means for in part extending the same service eastward from Dallas to Shreveport. The proposed plan of operation will be identical to that now in effect between Dallas and Big Spring and contemplates the movement of merchandise cars to set-out or concentration points along the line of the railway, from which distribution will be made to the smaller intermediate points by truck. * * *.

The evidence introduced is similar in character to that outlined in *Pennsylvania Truck Lines, Inc.,—Control—Barker Motor Freight, Incorporated, supra,* and leads to the same conclusions reached in that case, namely:

> The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such Coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. * * *.
>
> The record is convincing that the operating rights considered will be of great value to applicant and the railway towards effectuation of their announced plan to establish coördinated rail-motor service over the entire line of the railway, * * *.

There can be no doubt from the foregoing that the purchases of the described operating rights were approved not for the purpose of permitting applicant to engage in motor operations independent of its proprietary railroad but solely to enable it to render a service auxiliary to or supplemental of rail service. Nor was this intent obscure or uncertainly shown. On the contrary the tenor of our discussion and the conditions (2 and 5A) attached to
48 our grants leave no possibility that applicant or its proprietary railroad could have been misled into consummating transactions which they would not otherwise have done. Condition 5A reserving the right later to impose if necessary other and further restrictions designed to limit the operations to be performed to those auxiliary to or supplemental of railroad service is so definite and un-

equivocal that applicant's acceptance thereof could not have been under any mistaken impression as to what it was getting and it cannot now be heard to claim that an exercise of such reserved right deprives it of anything which it ever had. Neither is there any merit to the argument that imposition of the restriction would deprive the public of any needed all-motor service or impair the competitive situation. On the contrary, we have no doubt that confinement of applicant and its proprietary railroad to their legitimate field of service, namely railroad service, and their exclusion from competitive all-motor operations will clarify and intensify the competitive situation to the direct benefit of the public.

Without here passing upon the lawfulness of applicant's present operations as an independent motor common carrier, we are convinced that the public interest requires that all of applicant's operations before us in this proceeding be made subject to a specific condition limiting the authorized service to that which is auxiliary to or supplemental of rail service. This condition will be so framed as to permit applicant to render service in connection with the Texas and New Orleans Railroad Company and the other railroads named in its certificates. Since the Jefferson & Northwestern Railroad has been abandoned, the name of that carrier will be omitted.

Condition 2.

This condition and condition 3 both are calculated to implement and further the intent of condition one. It provides that applicant shall not serve or interchange traffic at any point not a station on a rail line of the Railway or of certain other railroads. All of applicant's cer-
49 tificates contain this condition with the exception of certificate No. MC-50544 (Sub-No. 14.) The latter authorizes service between Fort Worth, Tex., on the one hand, and sites of a bomber assembly plant and an ancorage and dock space located approximately 6 and 9 miles, respectively, northwest of Fort Worth. Applicant states that these points are in fact served by a spur track branching off the main line of the Railway near Benbrook, Tex., immediately west of Fort Worth, and that shipments to the plants in question are billed to Benbrook. Accordingly, condition 2 will be added to this certificate. The condition will be rephrased in each certificate so as to eliminate the words "or

interchange traffic at", since a motor carrier may, in any event, interchange traffic only at points it is authorized to serve.

Condition 3.

This condition which as stated above supplements and implements condition one, is used in two forms, one requiring a prior or subsequent movement by rail (hereinafter called the rail-haul condition) and the other naming so-called key points.[6] In one or the other of these forms condition 3 is imposed in certain of applicant's certificates, and omitted altogether in others. Applicant's operations between New Orleans and Shreveport and between Texarkana, Ark., and Marshall, Tex., are subject to the rail-haul condition. Its operations between Shreveport and Big Spring are without condition 3 in any form except as to seven small points,[7] which are subject to the rail-haul condition. Between Big Spring and Pecos, and between Texarkana and Fort Worth, via Sherman, the operations are subject to the rail-haul condition; and between Pecos and El Paso they are subject to a key point restriction. From the standpoint of mileages, applicant's operations over its main routes are subject to a rail-haul condition for approximately 460 miles, to a key point restriction for approximately 447 miles, and to neither form of condition 3 for approximately 492 miles except as to the seven points previously specified.

We are convinced that all of applicant's operations should be subjected to a form of condition 3 in order to make certain that in the future they will be auxiliary to, or supplemental of, rail service. While in certain cases in the past we have prescribed a rail-haul condition, we have generally done so where for some reason the key point restriction would be ineffective. Here there is no reason apparent why the latter type of condition would not be effective. Accordingly, a key-point condition alone will be prescribed covering applicant's entire operation.

At the original hearing in No. MC-50544 (Sub-No. 12) applicant listed the break bulk points on the Railway as

[6] Under this restriction shipments may not be transported between key points, or through, or to, or from more than one key point. For a discussion of the term see *Kansas City S. Transport Company, Inc., Com., Car., Application, supra.*

[7] Forney and Mesquite, Tex., authorized in No. MC-50544 (Sub-No. 9) and Aledo, Brazos, Santo, Gordon, and Mingus, Tex., authorized in No. MC-50544 (Sub-No. 19).

Marshall, Longview, Tex., New Orleans, Shreveport, Texarkana, Dallas, Fort Worth, Abilene, Big Spring, and El Paso. The certificate issued in that proceeding names Fort Worth and Texarkana as key points, and the certificate in the sub-number 11 proceeding names El Paso and Pecos as key points.

The examiners proposed that New Orleans and Addis, La., be named as key-points. Applicant argues that the latter point is not appropriate. It is a small town and is primarily a transfer point for handling less-than-carload freight. It is not an important origin or destination and does not receive or forward any substantial amount of traffic. Merchandise traffic originating or terminating thereat is small in volume and insufficient to sustain the operation of a daily merchandise car. Applicant asserts that to name Addis as a key point would unduly hamper its operations and deprive the public of a daily service. Applicant's argument has considerable merit, and accordingly we shall not name Addis as a key point herein.

Applicant also contends that the key points of Alexandria and Shreveport as proposed by the examiners are improper. It asserts that a merchandise car is operated
51 from Alexandria to Shreveport only on infrequent occasions due to the lack of sufficient tonnage at Alexandria, and that it is impossible to fill a 20,000 pound car at that point even if it is held in Alexandria for 36 hours. Only two merchandise cars moved from Alexandria to Shreveport during June, 1946, and only three during July, 1946. Although a merchandise car is operated regularly in the reverse direction from Shreveport to Alexandria, applicant claims that the schedule would result in a 12-to 24 hour delay if rail service alone were relied upon for the reason that the train from Shreveport to Alexandria departs Shreveport in the morning, thus necessitating applicant's receipt of the traffic the day before. The distance between Shreveport and New Orleans along applicant's main route is approximately 313 miles. To permit applicant to transport shipments this entire distance by truck would result in a motor service not bona fide related to the rail service. The fact that the Railway does not daily originate at Alexandria enough traffic fully to fill a northbound merchandise car is not enough to negative the naming of Alexandria as a key point. South of Alexandria, between that point and New Orleans, the Railway has a net

work of rail lines paralleled by routes now authorized to applicant. At each of the points on such routes the Railway no doubt originates shipments to Alexandria and points beyond. These shipments legitimately may be gathered or assembled at some convenient point by applicant, but if they are to move as rail traffic as they were solicited and billed they should be placed upon a train at the first practicable point. In our opinion such point in this instance is Alexandria. There is nothing of record to show that Alexandria and all other Texas and Pacific Railway points south thereof intermediate to New Orleans do not originate enough less-than-carload traffic to justify operation of a merchandise car from Alexandria to Shreveport. Alexandria, Shreveport, and New Orleans will be named as key points.

The distance between Fort Worth and Dallas is approximately 33 miles, and applicant's practice is to operate a shuttle service between these points. We do not see any need at the present time to restrict this service, and
52 accordingly shall name Fort Worth and Dallas as a single key point. Texarkana is now a key point and will be continued as such. The examiners also proposed that Marshall and Longview be named as key points. However, we are not convinced that a need exists at the present time for the naming of these as key points. Abilene, however, will be designated a key point as proposed by the examiners.

As hereinbefore indicated, the sub-number 11 certificate names El Paso and Pecos as key points. Applicant urges that Pecos, with a population of 4855, is neither a division point nor a junction point on the Railway, that no rail cars are set out at that point, and that no traffic originates there. The intermediate points between Pecos and El Paso have a total population of only 6,987 and are in a sparsely settled territory which allegedly renders the operation of merchandise cars impractical. In lieu of the key point restriction the joint board and the examiners accordingly proposed to substitute a condition providing that "no shipment originating at or destined to points east of Big Spring, Tex., shall be transported by applicant to or from points west of Big Spring unless the movement east of Big Spring shall be performed by the rail service of the Railways into or out of Big Spring." This however, would permit applicant to operate trucks between El Paso and Big Spring, a distance of approximately 340 miles, which,

in our opinion is an unduly long motor haul even in this territory. For this reason we are convinced that a point intermediate to El Paso and Big Springs should be named as a key point. In this connection, we are impressed by the fact that applicant's original plan of operation was to use Monahans, a rail junction point, as a break bulk point. This plan was abandoned merely because there was insufficient tonnage to meet war time requirements with respect to a minimum loading of 20,000 pounds per car and because of wartime changes in train schedules. Since these conditions are temporary in nature, we seen no reason not to name Monahans as a key point. The naming of that point will make unnecessary the designation of either Big Spring or Lovington as a key point.

53 *Condition 4.*

This condition is imposed in all of applicant's certificates except No. MC-50544 (Sub-Nos. 5, 6, 7, 8, 12, and 22.) It provides that all contractual arrangements between applicant and the Railway shall be reported to us and shall be subject to revision, if and as we find necessary in order that such arrangements shall be fair and equitable to the parties. In matters relating to compensation between applicant and the Railway, the latter will in reality be dealing with itself and, so far as ultimate financial results to the Railway is concerned, it is immaterial what these arrangements may be. It is important, however, that they be properly adjusted if we and the general public are to know or have the means of ascertaining the cost to the railroad of the services performed by applicant. Such information might be important in a rate proceeding or otherwise. See *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, 240. Accordingly, we shall prescribe condition 4 in all of those certificates not now containing it.

Condition 5.

This condition, either in form 5 or 5A, is now prescribed in each of applicant's certificates and will be prescribed here in order to preserve our right in the future to make such further changes or modifications in the conditions as may be necessary in order to insure that applicant's service is auxiliary to or supplemental of train service.

Certain of the certificates now held by applicant authorize the transportation of general commodities with

exceptions, whereas others contain no exceptions. Inasmuch as applicant is authorized to render only substituted service, its authority should be as broad from a commodity standpoint as that of the Railway. The exceptions to general commodities where they exist will be eliminated.

54 Upon further hearing, we find that the certificates issued to applicant in the proceedings set forth in Appendix A should be modified so as to authorize the transportation of general commodities without exceptions and to require that all future operations conducted under these certificates shall be subject to the following conditions and restrictions in lieu of those now set forth therein:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, the train service of The Texas and Pacific Railway Company, The Weatherford, Mineral Wells and Northwestern Railway Company, or Texas-New Mexico Railway Company, and between El Paso and Sierra Blanca, Tex., the train service of Texas and New Orleans Railroad Company, hereinafter called the Railways.

2. Applicant shall not render any service to or from any point not a station on a rail line of the Railways.

3. No shipments shall be transported by applicant between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Tex-arkana, Tex.-Ark., Fort Worth-Dallas (considered as one), Abilene, Monahans, and El Paso, Tex.

4. All contractual arrangements between applicant and the Railways shall be reported to us and shall be subject to revision if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as in the future we may find necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, the train service of the Railways.

An appropriate order will be entered.

CHAIRMAN LEE was necessarily absent and did not participate in the disposition of the proceedings.

55 APPENDIX A

PROCEEDINGS COVERED BY REPORT

No. MC-50544—The Texas and Pacific Motor Transport Company Common Carrier Application—Prior reports: 12 M. C. C. 37, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 1)—The Texas and Pacific Motor Transport Company Common Carrier Application—Louisiana—Prior reports: 10 M. C. C. 525, 30 M. C. C. 487, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 2)—The Texas and Pacific Motor Transport Company Extension—Wills Point—Gladewater, Tex.—Prior reports: 14 M. C. C. 645, 31 M. C. C. 500, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 3)—The Texas and Pacific Motor Transport Company Extension—Big Spring—Pecos, Tex.—Prior reports: 14 M. C. C. 649, 30 M. C. C. 487, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 4)—The Texas and Pacific Motor Transport Company Extension—Marshall—Texarkana, Tex.—Prior reports: 20 M. C. C. 593, 30 M. C. C. 487, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 5) (Purchase)—The Texas and Pacific Motor Transport Company Extension—Dallas-Abilene, Tex.

No. MC-50544 (Sub-No. 6) (Purchase)—The Texas and Pacific Motor Transport Company Extension—Abilene-Big Springs, Tex.

No. MC-50544 (Sub-No. 7)—The Texas and Pacific Motor Transport Company Extension—Alternate Routes—Prior reports: 31 M. C. C. 1, 41 M. C. C. 721.

56 No. MC-50544 (Sub-No. 8) (Purchase)—The Texas and Pacific Motor Transport Company Extension—Dallas-Wills Point, Tex.

No. MC-50544 (Sub-No. 9)—The Texas and Pacific Motor Transport Company Extension—Mesquite-Forney, Tex.—Prior reports: 23 M. C. C. 824, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 10)—The Texas and Pacific Motor Transport Company Extension—Big Springs-Hobbs—Prior reports: 30 M. C. C. 465, 41 M. C. C. 721.

No. MC-50544 (Sub-No. 11)—The Texas and Pacific Motor Transport Company Extension—Pecos-El Paso, Tex.—Prior report: 33 M. C. C. 38.

No. MC-50544 (Sub-No. 12)—The Texas and Pacific Motor Transport Company Extension—Texarkana—Prior report: 32 M. C. C. 854.

No. MC-50544 (Sub-No. 14)—The Texas and Pacific Motor Transport Company Extension—Fort Worth, Tex. —Prior reports: 30 M. C. C. 852, 41 M. C. C. 721.

No. MC 50544 (Sub-No. 22)—The Texast and Pacific Motor Transport Company Extension—Aledo, Tex.—Prior report: 34 M. C. C. 813.

No. MC50544 (Sub-No. 22)—The Texas and Pacific Motor Transport Company—Dallas-Fort Worth—Prior report: 32 M. C. C. 878.

When the proceedings listed in the foregoing were reopened for further hearing, the applicant was performing service under temporary authorities issued in Nos. MC-50544 (Sub-No. 21 TA), MC-50544 (Sub-No. 24 TA), and 50544 (Sub-No. 21 TA), MC-50544 (Sub-No. 24 TA), and temporary authority were reopened for hearing with the proceedings involving certificates of public convenience and necessity. The temporary authorities have expired and for that reason will not be considered further.

57 APPENDIX B

Docket No.	Scope of Operation	Application of Conditions set Forth Below
MC-50544	Monahans, Tex., Lovington, N. Mex. All intermediate points; off-route points of Wink, Tex., and Eunice, N. Mex.	1, 2, 4, and 5
MC-50544 (Sub-No. 1)	New Orleans, La.-Port Allen, La.; Donaldsonville, La. - Thibodeaux, La.; Port Allen-Innis, La.; Innis-Torras, La.; Port Allen-New Roads, La.; Port Allen-Rosedale, La.; Innis-Longbridge, La.; Longbridge, Marksville, La.; Marksville-Alexandria, La.; Marksville-Bunkie, La.; New Roads-Livonia, La.; Livonia-Grosse Tete, La.; Livonia-Fordoche, La. Lottie-Krotz Springs, La.; Krotz Springs-Lebeau, La.; Krotz Springs - Mecker, La.; Krotz Springs-Opelousas, La.; Opelousas-Ville Platte, La.; Opelousas-Eunice, La.; Lawtell-Alexandria; Eunice-Turkey Creek, La.; Alexandria-Cypress, La.; Derry-Burmuda, La.; Cypress-Shreveport, La.; Robeline-Natchitoches, La.; and Alexandria-Shreveport. All intermediate points on railway.	1, 2, 3A, 4, and 5
MC-50544 (Sub-No. 2)	Wills Point-Gladewater, Tex. All intermediate points on railway.	1, 2, 4, and 5
MC-50544 (Sub-No. 3)	Big Spring-Pecos, Tex. All intermediate points.	1, 2, 3,* 4, and 5

* Certificate recites Condition 3A.

Docket No.	Scope of Operation	Application of Conditions set Forth Below
MC-50544 (Sub-No. 4)	Marshall-Texarkana, Tex. All intermediate points on railway. All off-route points on railway between Marshall and Texarkana.	1, 2, 3A, 4, and 5
MC-50544 (Sub-No. 5)	Dallas-Abilene, Tex. Off-route points of Millsap, Tex., and all intermediate points except Albany, Metcalf Gap, Palo Pinto, Caddo, and Brad. Eastland - Ranger - Breckenridge, Tex. All intermediate points.	2 and 5A
MC-50544 (Sub-No. 6)	Abilene-Big Spring. All intermediate points.	2 and 5A
MC-50544 (Sub-No. 7)	Weatherford - Mineral Wells - Point south of Strawn, Tex. Intermediate point of Thurber, Tex.	2 and 5A
MC-50544 (Sub-No. 8)	Dallas - Wills Point; Gladewater - Shreveport. All intermediate points except Forney and Mesquite, Tex.	2 and 5A

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MC-50544 (Sub-No. 9)	Intermediate point of Forney; Junction U. S. Highway 80 and unnumbered highway, and junction Texas Highway 183 and U. S. Highway 80. Intermediate point of Mesquite, Tex.	1, 2, 3, 4, and 5
MC-50544 (Sub-No. 10)	Big Spring-Hobbs, N. Mex.	1, 2, 4, and 5
MC-50544 (Sub-No. 11)	Pecos-El Paso, Tex. All intermediate points on railway.	1, 2, 3C, 4, and 5
MC-50544 (Sub-No. 12)	Texarkana, Tex.-Ark.-Fort Worth, Tex. Intermediate points of Lone Star Shell Loading Plant and the Red River Ordnance Depot, Tex., approximately 16 and 20 miles, respectively, west of Texarkana without restriction. All intermediate points and off-route point of Annova, Tex.	1, 2, 3B, and 5
MC-50544 (Sub-No. 14)	Fort Worth-bomber assembly plant and anchorage and dock space approximately 6 and 9 miles, respectively, northwest of Fort Worth.	1, 4, and 5
MC-50544 (Sub-No. 19)	Off-route points of Aledo, Brazos, Santo, Gordon, and Mingus, Tex.	1, 2, 3, 4, and 5
MC-50544 (Sub-No. 22)	Dallas-Fort Worth. Off-route points on railway between Dallas and Fort Worth.	2 and 5A

Conditions

1. The service to be preformed by applicant shall be limited to service which is auxiliary to, or supplemental of rail service of the Texas and Pacific Railway or in certain cases of its subsidiary rail lines, (or of Texas-New Mexico Railway Company) herein called the Railway.

2. Applicant shall not serve, or interchange traffic at any point not a station on a rail line of the Railway.

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to the Railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

59 3A. Shipments transported by applicant shall be limited to those which it receives from or delivers to the Railway under a through bill of lading covering in addition to movement by applicant, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

3B. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points or through, or to, or from more than one of said points: Fort Worth, Tex., and Texarkana, Tex.-Ark.

3C. No shipments shall be transported by applicant between any of the following points or through, or to, or from more than one of said points: El Paso and Pecos, Tex.

4. All contractual arrangements between applicant and the Railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and suitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

5A. The authority herein granted shall be subject to such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, train service of the Railway, and in order to insure that the service rendered shall not unduly restrain competition.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 22nd day of January, A. D. 1948.

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

60 No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—WILLS POINT-GLADEWATER, TEX.

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRINGS-PECOS, TEX.

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MARSHALL-TEXARKANA, TEX.

No. MC-50544 (Sub-No. 5)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-ABILENE, TEX.

No. MC-50544 (Sub-No. 6)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ABILENE-BIG SPRING, TEX.

No. MC-50544 (Sub-No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 8)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-WILLS POINT, TEX.

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE-FORNEY, TEX.

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING, HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS-EL PASO, TEX.

61 No. MC-50544 (Sub-No. 12)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—TEXARKANA

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—FORT WORTH, TEX.

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEX.

No. MC-50544 (Sub-No. 22)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-FORT WORTH

It appearing, That, in all the foregoing proceedings, the Commission, Division 5, issued certificates of public convenience and necessity to The Texas and Pacific Motor Transport Company authorizing it to conduct certain motor carrier operations in interstate or foreign commerce;

It further appearing, That, upon consideration of the records and of the joint petition of The Texas and Pacific Motor Transport Company and The Texas and Pacific Railway Company, said proceedings were reopened for further hearing solely with respect to certain matters;

And it further appearing, That such further hearing of the matters and things involved has been had, and that said division, on the date hereof, has made and filed a report on further hearing herein containing its findings of fact and conclusions thereon, which report and the prior orders in said proceedings are hereby referred to and made a part hereof;

It is ordered, That the certificates previously issued in said proceedings be, and they are hereby, modified to the extent shown in said report on further hearing; that in all other respects, the provisions of the previous certificates shall remain in full force and effect; and that amended certificates be issued to The Texas and Pacific Motor Transport Company;

62 *And it is further ordered*, That this order shall be effective March 22, 1948.

By the Commission, Division 5

(Seal)

W. P. BARTEL,
Secretary.

63 *Exhibit "B" to Complaint*

ORDER

At a general Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of May, A. D., 1949.

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION
Dallas, Texas

No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—WILLS POINT-GLADEWATER, TEX.

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING-PECOS, TEX.

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MARSHALL-TEXARKANA, TEX.

No. MC-50544 (Sub-No. 5)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-ABILENE, TEX.

No. MC-50544 (Sub-No. 6)

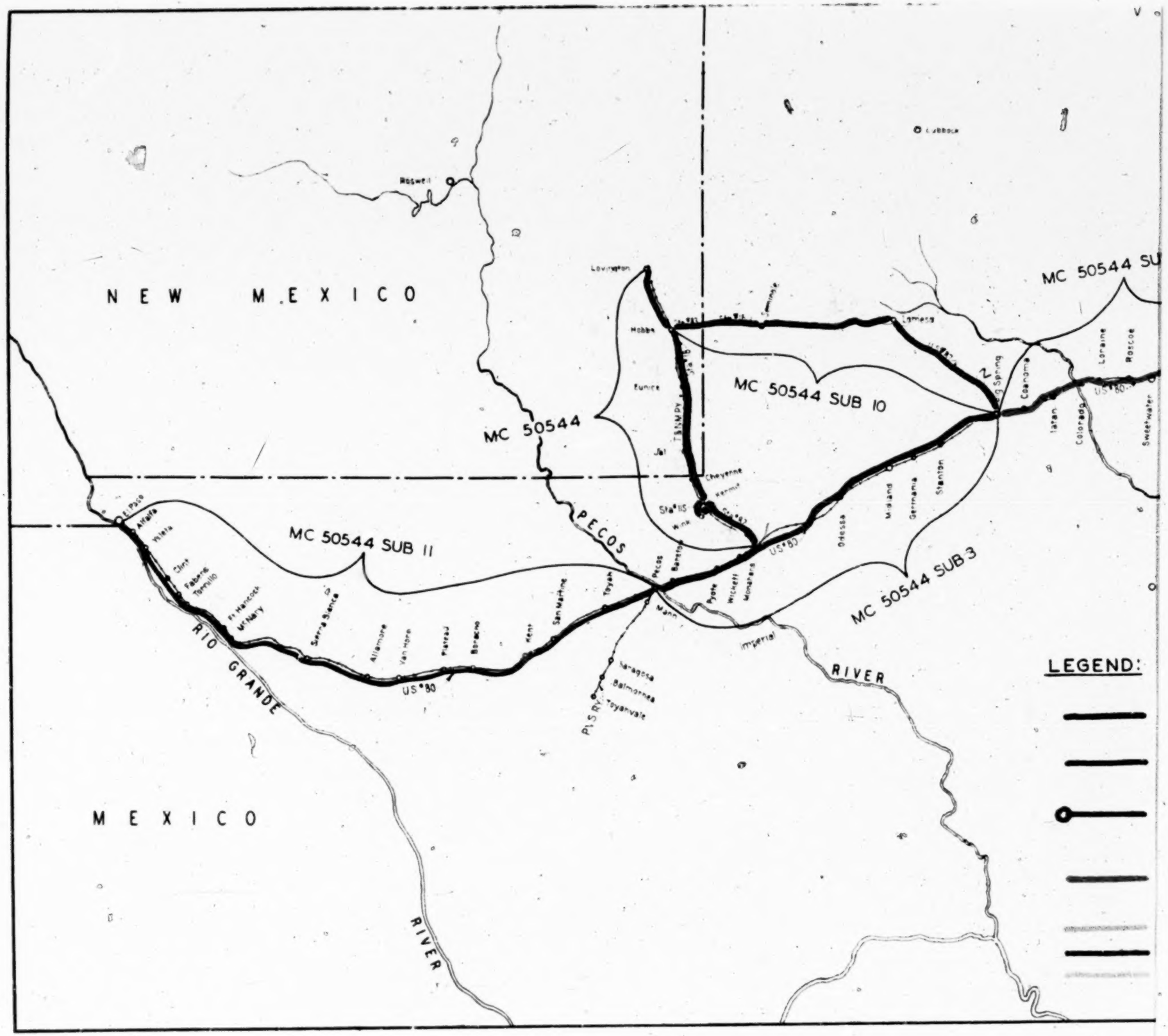
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ABILENE-BIG SPRING, TEX.

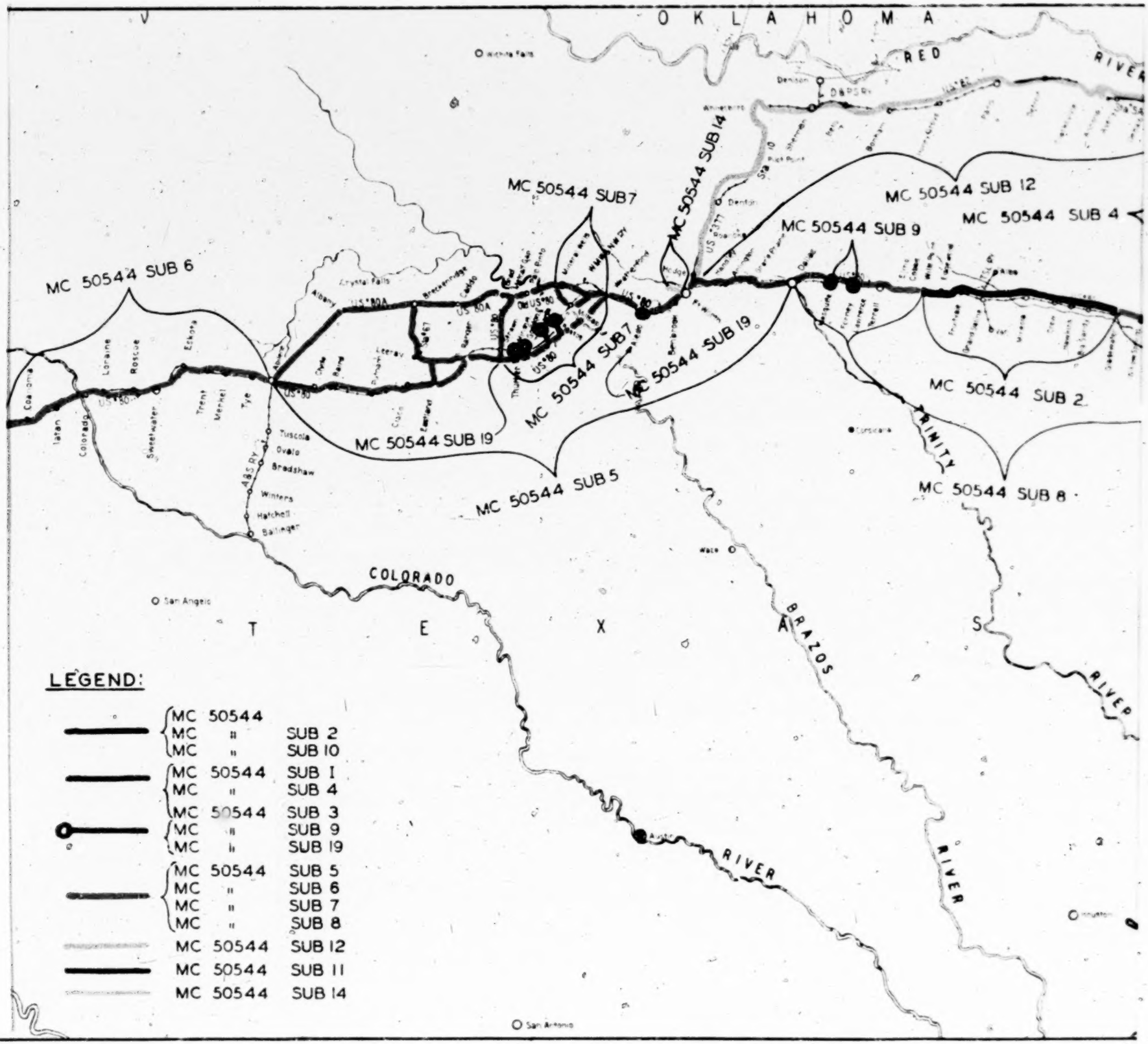
No. MC-50544 (Sub-No. 7)

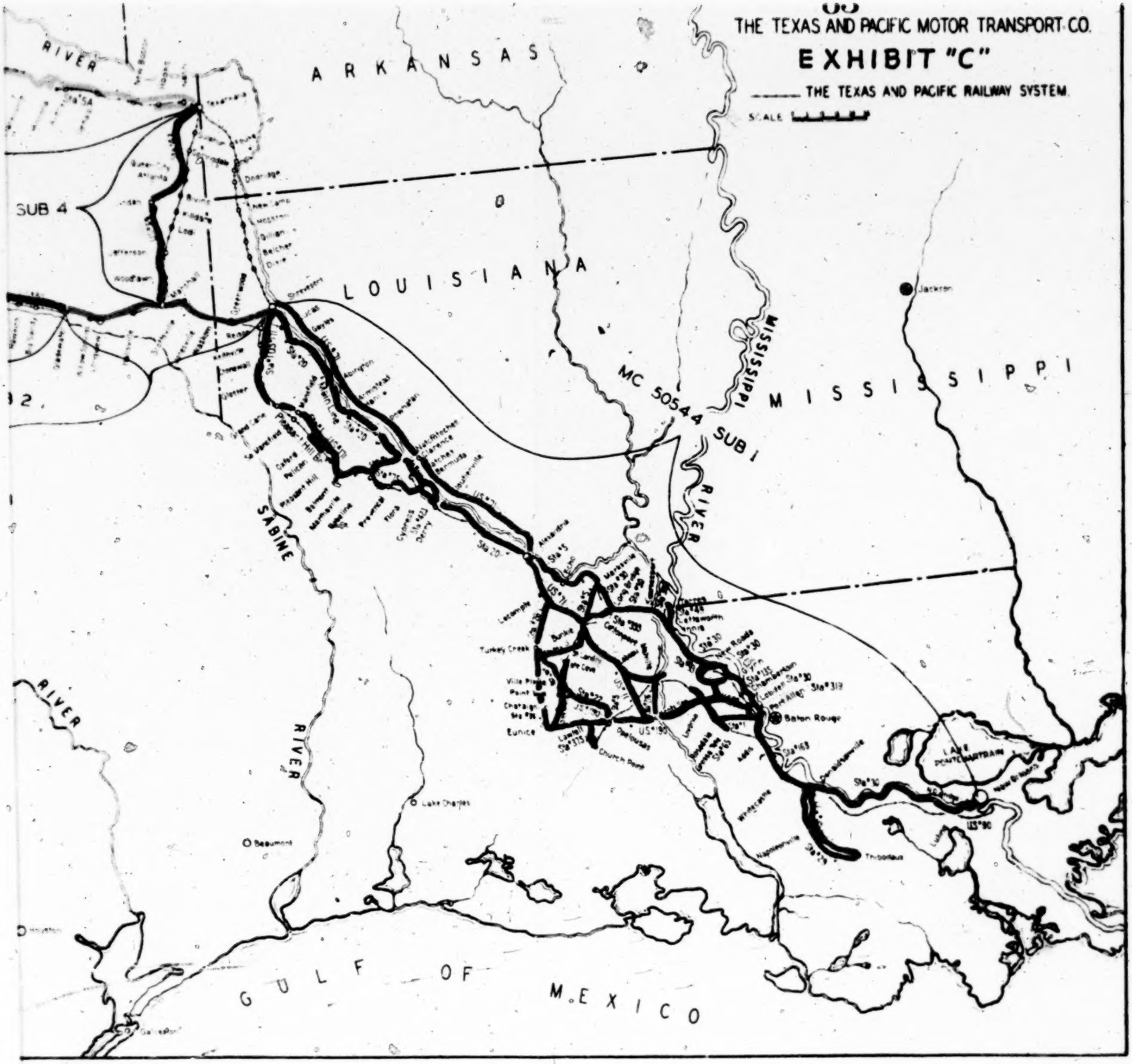
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 8)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-WILLS POINT, TEX.


NEW MEXICO
MEXICO
MC 50544
MC 50544 SUB 10
MC 50544 SUB 11
MC 50544 SUB 3
PECOS
RIO GRANDE
RIVER
US 80
LEGEND:


O K L A H O M A
RED RIVER
MC 50544 SUB 14
MC 50544 SUB 7
MC 50544 SUB 12
MC 50544 SUB 4
MC 50544 SUB 9
MC 50544 SUB 6
MC 50544 SUB 19
MC 50544 SUB 7
MC 50544 SUB 19
MC 50544 SUB 2
MC 50544 SUB 5
MC 50544 SUB 8
TRINITY
COLORADO
BRAZOS
RIVER
T E X A S
LEGEND:
MC 50544
MC " SUB 2
MC " SUB 10
MC 50544 SUB 1
MC " SUB 4
MC 50544 SUB 3
MC " SUB 9
MC " SUB 19
MC 50544 SUB 5
MC " SUB 6
MC " SUB 7
MC " SUB 8
MC 50544 SUB 12
MC 50544 SUB 11
MC 50544 SUB 14


THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.
EXHIBIT "C"
THE TEXAS AND PACIFIC RAILWAY SYSTEM.
SCALE
ARKANSAS
LOUISIANA
MISSISSIPPI
SUB 4
MC 50544 SUB 1
SABINE RIVER
MISSISSIPPI RIVER
Jackson
Baton Rouge
Lake Charles
Beaumont
GULF OF MEXICO

51-A-149

64 No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE-FORNEY, TEX.

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING-HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS-EL PASO, TEX.

No. MC-50544 (Sub-No. 12)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—TEXARKANA

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—FORT WORTH, TEX.

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEX.

No. MC-50544 (Sub-No. 22)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-FORT WORTH

Upon consideration of the records in the above-entitled proceedings, and of petition of applicant for reconsideration, and vacation of the report and order on further hearing of Division 5, and for oral argument, dated April 8, 1948; and good cause appearing therefor:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

W. P. BARTEL,
Secretary.

(Seal)

66 In United States District Court

Answer of the United States of America—
Filed Sept. 9, 1949

Now comes the United States of America, defendant in the above-styled cause, and in response to the complaint filed herein answers and says:

I

Answering paragraph I, defendant admits the jurisdiction of this Court over the parties and the subject matter of this suit.

II

Answering paragraph II of the complaint, the United States of America admits that the plaintiff is a common carrier, as authorized by the Interstate Commerce Commission, engaged in the transportation of property in interstate commerce, and that the entire capital stock of the plaintiff is owned by The Texas and Pacific Railway Company, a common carrier by railroad. Further answering the allegations of paragraph II of the complaint, the United States of America alleges that such allegations have been or will be sufficiently answered herein, are immaterial to the issues herein and therefore require no answer, or are not within the information of the United States of America and therefore are neither admitted nor denied.

III

67 Answering the allegations of paragraph III of the complaint, the United States of America alleges that such allegations are otherwise sufficiently answered herein, are immaterial to the issues herein and therefore require no answer, or are not within the knowledge of the United States of America and therefore are neither admitted nor denied.

IV

Answering paragraphs IV and V of the complaint the United States of America admits that the plaintiff filed a series of applications with the Interstate Commerce Commission seeking the issuance by it of certificates of public convenience and necessity which would enable plaintiff to operate as a common carrier in interstate commerce, pursuant to what is now Section 207 of the Interstate Commerce Act, Part II, and three applications, under the terms of Section 213 of the Motor Carrier Act of 1935 (now Section 5 of the Interstate Commerce Act, Part I) for the purchase and acquisition by plaintiff of the motor carrier operating

rights acquired and developed by other common carrier motor carriers prior to the passage of the Motor Carrier Act of 1935, and defendant United States of America admits that these several applications were approved and certificates of public convenience and necessity were authorized by the Interstate Commerce Commission subject to various restrictions or conditions as designated in the respective reports, orders, and certificates.

V

Answering the remaining allegations of the complaint defendant United States of America alleges that all of the certificates involved in this proceeding contained one or more conditions in which the Interstate Commerce Commission reserved the right in the future to impose such additional revised conditions as it might find necessary in order to restrict applicant's operation to a service auxiliary to or supplemental of rail service. Further, the United States of America alleges that pursuant to its reservation of the right in the future to impose such additional
68 or revised conditions, the Interstate Commerce Commission did, by its report and order dated January 22, 1948, (Exhibit A to the complaint) impose such additional revised conditions to the certificates here involved as the Commission deemed necessary in order to restrict applicant's operation to a service auxiliary to or supplemental of rail service, and the United States alleged further that the Interstate Commerce Commission did by the order of the entire Interstate Commerce Commission dated May 9, 1949, (Exhibit B to the complaint) overrule Petitioner's petition for rehearing and reconsideration, thereby constituting the order of January 22, 1948 (Exhibit A to the complaint), the final order of the Commission.

The defendant United States of America denies that the Interstate Commerce Commission's orders of January 22, 1948, and May 9, 1949, are void or invalid for any reason set forth in the complaint, or for any other reason. Further answering, the defendant United States of America states that the administrative proceedings before the Interstate Commerce Commission were conducted in accordance with the standards prescribed by Congress and all laws applicable thereto and that said reports and orders of the Commission constitute the lawful action of that Commission. Defendant United States of America further states that said reports and orders were duly made, within the said Commission's constitutional and statutory powers, upon adequate findings, supported by substantial evidence, and were and are in all respects valid and lawful.

VI

Except as herein expressly admitted, defendant denies each and every allegation in the complaint contained.

69 Wherefore, defendant prays that the relief prayed for by plaintiff be denied and that the complaint be dismissed, plaintiff to pay the costs.

WILLIAM D. MCFARLANE
William D. McFarlane
Special Assistant to the Attorney General

Frederick R. Hanlon
FREDERICK R. HANLON
Special Attorney
Department of Justice, Washington, D. C.
Attorneys for the United States of America
Defendant

HERBERT A. BERGSON
Assistant Attorney General

JAMES E. KILDAY
Special Assistant to the Attorney General

FRANK B. POTTER
United States Attorney

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing answer has been mailed to the following persons:

John C. Robertson, Esq.
Republic Bank Building
Dallas, Texas

H. L. Underwood, Esq.
Assistant Chief Counsel
Interstate Commerce Commission
Washington 25, D. C.

FREDERICK R. HANLON
Frederick R. Hanlon
Special Attorney

September 8, 1949

70 In United States District Court

Answer of Interstate Commerce Commission—
Filed Sept. 12, 1949

Now comes the Interstate Commerce Commission, a defendant herein (hereinafter referred to as "Commission") and for answer to the complaint herein filed, says:

I.

Answering paragraph I, the Commission admits the jurisdiction of this court of the subject matter of this suit and of the parties; it admits the purpose of the suit as stated therein.

II.

Answering paragraph II of the complaint, the Commission admits that plaintiff is wholly owned by the Texas and Pacific Railway Company, herein referred to as "Railway"; it admits the corporate status of plaintiff and that plaintiff has conducted operations in interstate commerce as a motor carrier, by virtue of certificates issued by the Commission. It avers, however, that the certificates so issued contained restrictions or conditions in respect to operations or other matters.

The Commission is without knowledge or information in respect to the investment alleged to have been made by plaintiff to promote its motor carrier operations, as
71 alleged in the fourth subparagraph of paragraph II, therefore neither admits nor denies the same, but it submits that the said allegations are not material herein.

III.

Answering paragraph III of the complaint, the Commission submits that as that paragraph refers to operations by plaintiff prior to the effective date of the Motor Carrier Act, it is not required to make answer thereto, since the matters stated therein have no relevancy or materiality to the subject matter of this suit.

IV.

Answering paragraph IV of the complaint, the Commission admits the allegations therein contained as to the filing of applications by plaintiff under the stated provisions of the Interstate Commerce Act.

V.

Answering paragraph V of the complaint, the Commission admits the allegations therein concerning the applications filed by plaintiff seeking authority of the Commission for the purchase of operating rights; admits that the Commission approved said applications and that certificates authorizing operations by plaintiff were issued to it. It denies that the certificates conferred on plaintiff the so-

called grandfather rights alleged to have been possessed by the parties from whom plaintiff purchased. On the contrary, it avers that the rights and authority granted were limited to operations auxiliary to, or supplemental of, rail carrier service. It admits that each of the said certificates issued contained the conditions as specified and set forth on page 9 of the complaint.

The Commission submits that it is not required to make answer to the last paragraph of subparagraph "A".

72 The Commission admits the allegations contained in subparagraph "B" of this paragraph of the filing of applications by plaintiff, pursuant to Section 207 of the Interstate Commerce Act, 49 U. S. C. 307; and the issuance of certificates subject to conditions as set forth in said subparagraph.

It admits the allegations of subparagraph "C" of this paragraph.

VI.

Answering paragraph VI, the Commission admits the allegations of fact in respect to operations by plaintiff, but it denies that such operations other than service auxiliary to, or supplemental of rail service were authorized by the certificates issued to it by the Commission and avers that said operations, other than such auxiliary or supplemental service, were without the scope of the operations authorized in and by said certificates and were in violation of the terms and conditions thereof; it also denies that the Commission had interpreted the scope of the restrictions contained in the certificates as authorizing any operations of plaintiff, other than service auxiliary to, or supplemental of, rail service, and denies that it acquiesced in the performance of such service not auxiliary to, or supplemental of, rail service.

VII.

Answering paragraph VII, the Commission admits that the proceedings specified in said paragraph were instituted and entertained by it and that reports were made and orders issued. It submits that the reports and orders so made are the best evidence of its findings, conclusions and requirements and respectfully refers the Court to them for full information concerning them.

73 The Commission denies each and every allegation contained in said paragraph inconsistent with, or at variance with, its findings, reports and orders in said proceedings.

Further, it denies each and all inferences, conclusions and assertions as to the effects of its action upon plaintiff.

It denies that any of its conclusions, findings, requirements and orders were or are arbitrary in any respect or were or are a reversal of former policy in respect of the operating authority granted to plaintiff.

VIII.

Answering paragraph VIII, the Commission submits that said paragraph is argumentative and that it is not required to make answer thereto.

IX.

Answering paragraph IX, the Commission denies that its orders referred to therein are unlawful for the reasons set forth in said paragraph or for any other reason or reasons.

X.

Answering paragraph X, the Commission denies that the plaintiff will suffer irreparable damage unless its orders of January 22, 1948, and May 9, 1949, are set aside, annulled or suspended, and on the contrary it asserts no legal damage will ensue to the plaintiff by enforcement of said orders.

Further answering the complaint herein, the Commission avers that on August 7, 1941, plaintiff filed with it a petition requesting an order or instructions defining its rights under the restrictions and conditions contained in certain certificates acquired by it; this resulted in the report of January 21, 1943, 41 M. C. C. 721, wherein the Commission specifically defined and construed the operating rights authorized by the certificates theretofore issued.

74 Thereupon, plaintiff and the Railway filed a joint petition seeking reconsideration of the findings of the Commission, oral argument, modification of the Commission's tariff regulations which prevent the Railway from participation in joint rates with independent motor carriers, or in the alternative further hearing in each proceeding covered by the petition.

Upon said petition, the Commission reopened all the proceedings embraced in its report listed in Appendix to its report (Complaint, p. 53), for further hearing for the sole purpose of determining what, if any, changes or modifications should be made in the conditions attached to the 16 certificates and set a date for further hearing upon said reopened proceedings.

The Commission further avers that at said hearing the plaintiff herein appeared at said hearing and was afforded opportunity to be heard and to present evidence upon the matters relevant to the questions under consideration, but declined to offer any evidence or to take part therein except to join in a motion for discontinuance of the proceedings; further it avers that upon consideration of the record in that proceeding and those in the proceedings in the cases involving the applications made and in which certificates were issued, it determined the issues and entered and served upon the parties thereto its report and order of January 22, 1948; that said report contained its findings of fact and conclusions therein.

The Commission further alleges that each and all of the said findings and conclusions were supported by substantial evidence.

The Commission further alleges that in making said report, it considered and weighed in the light of its own knowledge and experience all the facts and conditions involved therein, and including questions and matters covered by the allegations of the complaint herein.

75 The Commission further alleges that the said report and order of January 22, 1948, were not made or entered either arbitrarily or capriciously or contrary to the facts or without support in the records; that in making said report and order, it did not exceed the authority duly conferred upon it; and the Commission denies each and every allegation to the contrary contained in the complaint herein.

The Commission, further answering, denies that its said report and orders are unlawful for the reasons alleged in the complaint or for any other reasons; it denies that its said report and orders constitute or will result in depriving plaintiff of its rights in violation of the Fifth Amendment to the Constitution of the United States; denies that said report and order constitute or will result in discrimination.

If further denies that the plaintiff will suffer irreparable damage unless the enforcement of the Commission's orders are enjoined; on the contrary the Commission avers that such loss, if any ensue, will be a loss of an amount which the plaintiff has heretofore secured by disregard of the conditions under which it is authorized to operate; that such loss is not one which can legally support a claim of irreparable damage. Further, that loss arising from a lawful ruling or requirement is not a proper basis for equity relief by injunction.

Further answering, the Commission avers that the plaintiff accepted the certificates here involved with conditions and in each case subject to a condition whereby the Commission reserved the right to impose in the future such additional or revised conditions or restrictions as it might find necessary in order to restrict plaintiff's operations to a service auxiliary to, or supplemental of, rail service; that it instituted and has maintained such operations under
76 the certificates and pursuant to be authority granted for the specified service, and was no notice of the type of service granted; that such additional conditions cannot be assailed since they are relevant and appropriate to, and in furtherance of, the clear intent to confine plaintiff's operations to such auxiliary or supplementary service and are also consonant with the national transportation policy declared by Congress in the Interstate Commerce Act.

Except as herein expressly admitted, the Commission denies each and every allegation contained in the complaint insofar as they conflict with the allegations herein or with the statements or conclusions contained in said report and order of January 22, 1948, to which reference is hereby made.

Wherefore, the Commission prays that the complaint be dismissed.

INTERSTATE COMMERCE COMMISSION

H. L. UNDERWOOD
By H. L. Underwood
Assistant Chief Counsel

DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel.
Of Counsel.

77 CERTIFICATE OF SERVICE

I, H. L. UNDERWOOD, Attorney for defendant Interstate Commerce Commission in the above-entitled action, hereby certify that on the 7th day of September, 1949, I served the attached answer upon each party to this action by depositing a copy in the United States mails addressed to each of the following attorneys:

John C. Robertson, Esq.,
Republic Bank Bldg.,
Dallas, Texas.
Attorney for Plaintiff

William D. McFarlane, Esq.,
Special Assistant to the Attorney General,
Department of Justice,
Washington, D. C.

Frank B. Potter, Esq.,
United States Attorney,
Dallas 1, Texas.
Attorneys for the United States
of America.

H. L. UNDERWOOD
H. L. Underwood
Assistant Chief Counsel
For Interstate Commerce Commission

78 In United States District Court

Answer of Regular ~~Commerce~~ Common Carrier Conference of American Trucking Association, Inc.—
Filed Nov. 10, 1949

To the Honorable Judges of said Court:

COMES Now Regular Common Carrier Conference of American Trucking Associations, Inc., and with leave of the Court first had and obtained, files this, its answer to the Complaint of Petitioner herein and for such Answer it would respectfully show to the Court as follows:

I

That Intervener has an interest in this proceeding, such interest being that many of its members engaged in the trucking industry are in direct competition with Petitioner in its operations and has an interest in the conditions attached to Petitioner's certificate of convenience and necessity.

II

Regular route common carriers of general commodities not affiliated with any railroad, are and were at the time the order of the Commission was issued, operating over each and every one of the highways and serving each and every one of the points which Petitioners were granted authority to serve either as the result of purchases of operating rights or applications seeking certificates of public convenience and necessity; that practically all of such regular route common carriers are members of this Association.

That additional members of the said Conference which do not operate over identical routes and serve identical points as does Petitioner, join with the carriers so operating over identical routes and serving identical points in joint through rates and routes and thereby provide service in interstate commerce from and to all places in the United States and to and from points served by Petitioner.

79 III

Further answering herein, this Intervener adopts and makes as its own in answer to said Complaint, all of the admissions, denials and affirmative allegations contained in the original answer of defendant Interstate Commerce Commission herein.

WHEREFORE, Intervener denies that the Petitioner is entitled to the relief, or any part thereof, in the said Complaint demanded, or any relief whatsoever, and prays that the Petitioner take nothing by its said complaint.

CALLAWAY & REED
FRANK C. BROOKS

Frank C. Brooks
305 Empire Bank Bldg.
Dallas 1, Texas

80 In United States District Court

Answer of the Intervening Defendant, Railway Labor Executives' Association— Filed Nov. 10, 1949

Now comes the Railway Labor Executives' Association, intervening defendant in the above entitled action, and in response to the allegations of the Complaint filed herein adopts as its Answer and incorporates herein by reference the Answer of the United States of America dated September 8, 1949, and heretofore filed with this Court.

/s/ HARMON L. WATKINS
Harmon L. Watkins
311 Southland Life Building
Dallas 2, Texas

/s/ EDWARD J. HICKEY, JR.
Edward J. Hickey, Jr.
620 Tower Building
Washington 5, D. C.
Attorneys for Intervenor
Railway Labor Executives' Association

Of Counsel:
MULHOLLAND, ROBIE, MCEWEN & HICKEY
620 Tower Building
Washington 5, D. C.

Dated: November 9, 1949

81 In United States District Court

Stipulation of Parties that the Hearing on Nov. 11, 1949, Shall be the Final Hearing on Petitioner's Prayer for Permanent Injunctive Relief—Filed Oct. 8, 1949

IT IS STIPULATED BY THE PARTIES HERETO, acting through their respective counsel of record, that the hearing of the above styled and numbered cause on November 11, 1949 shall be the final hearing on Petitioner's prayer for permanent injunctive relief.

Dated this 30th day of September, 1949.

/s/ J. T. SUGGS
Of Counsel for Petitioner

/s/ WILLIAM D. MCFARLANE
Special Assistant to the Attorney General
Attorney for the United States of America,
Defendant

INTERSTATE COMMERCE COMMISSION
Defendant
by /s/ H. L. UNDERWOOD

82 In United States District Court

Request for Admissions Under Rule 36—Filed July 21, 1949

The Texas and Pacific Motor Transport Company, Petitioner, having obtained leave of the Court so to do, requests the Defendants, United States of America and Interstate Commerce Commission, not later than August 1, 1949, to make the following admissions, pursuant to Rule 36, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

THAT EACH OF THE FOLLOWING STATEMENTS IS TRUE

1. That there are railroad-controlled companies operating as motor carriers in the same territory with and directly in competition with other interstate common carrier motor carriers not so controlled, under one or more Interstate Commerce Commission certificates of public convenience and necessity which do not contain, and with respect to which the Interstate Commerce Commission has taken no action to impose, conditions or restrictions limiting such railroad-controlled motor carriers' service to that which is auxiliary to or supplemental of train service.

2. That there are railroad-controlled companies operating as motor carriers under one or more Interstate
83 Commerce Commission certificates of convenience and necessity which do not require such carriers to charge rail freight rates and which contain no restriction against such carriers' participation in motor tariffs and in through routes under joint rates with other common carrier motor carriers.

3. That Carl Rose filed an application with the Interstate Commerce Commission under the provisions of Section 206a of the Motor Carrier Act of 1935 for the issuance to him of a certificate of public convenience and necessity based on his "grandfather" rights covering in part a route between Abilene, Texas and Big Spring, Texas.

4. That W. A. Johnson, doing business as Johnson Motor Lines, filed an application with the Interstate Commerce Commission under the terms of Section 213 of the Motor Carrier Act of 1935 for authority to acquire from Carl Rose the route between Abilene, Texas and Big Spring, Texas.

5. That the only certificate issued by the Interstate Commerce Commission on the applications of Carl Rose, W. A. Johnson (doing business as Johnson Motor Lines) and The Texas and Pacific Motor Transport Company with respect to the route from Abilene, Texas to Big Spring, Texas, was the certificate issued to The Texas and Pacific Motor Transport Company, in Docket No. MC-50544, Sub. No. 6 (MC-F-107).

6. That Fort Worth Warehouse and Storage Company, Inc., filed an application with the Interstate Commerce Commission under the provisions of Section 206a of the Motor Carrier Act of 1935 for the issuance to it of a certificate of public convenience and necessity based on its "grandfather" rights covering a route between Dallas, Texas and Abilene, Texas.

7. That the only certificate issued by the Interstate Commerce Commission on the applications of Fort Worth Warehouse and Storage Company and The Texas and Pacific Motor Transport Company with respect to the route from Dallas, Texas to Abilene, Texas was the certificate issued to The Texas and Pacific Motor
84 Transport Company in Docket No. MC-50544, Sub. No. 5 (MC-F-108).

8. That Southern Transportation Company filed an application with the Interstate Commerce Commission under the provisions of Section 206a of the Motor Carrier Act of 1935 for the issuance to it of a certificate of public convenience and necessity based on its "grandfather" rights covering in part routes between Dallas, Texas and Wills Point, Texas and between Gladewater, Texas and Shreveport, Louisiana.

9. That the only certificate issued by the Interstate Commerce Commission on the applications of Southern Transportation Company and The Texas and Pacific Motor Transport Company with respect to the routes between Dallas, Texas and Wills Point, Texas and between Gladewater, Texas and Shreveport, Louisiana, was the certificate issued to The Texas and Pacific Motor Transport Company in Docket No. MC-50544, Sub. No. 8.

10. That the published interstate freight rates charged by railroads are generally higher than published interstate freight rates of common carrier motor carriers.

11. By its report and order of January 22, 1948, imposing Condition "1" on the certificates of The Texas and Pacific Motor Transport Company therein listed, the Interstate Commerce Commission intends to prohibit The Texas and Pacific Motor Transport Company from:

a. Publishing its own interstate freight rates;
b. Publishing its own interstate freight tariffs;
c. Participating with common carrier motor carriers in joint interstate freight rates;
d. Participating with common carrier motor carriers in joint interstate freight tariffs;
e. Establishing and maintaining through routes with common carrier motor carriers;
f. Interchanging interstate traffic with common carrier motor carriers;
g. Entering into contracts of interstate carriage in its own name;

h. Issuing its own bills of lading covering interstate shipments;

85 i. Holding itself out to the public generally as being ready, able and willing to transport commodities generally on its own account.

12. That the originals of the letter exhibited herewith were mailed by United States mail to Messrs. I. C. Bailey, Agent, 150 Causeway Street, Boston, Mass.; W. L. Meyers, Chief, Section of Tariffs, Central States Motor Freight Bureau, Inc., Chicago, Ill.; C. E. Bellew, Assistant Secretary, Western Trunk Line Common Carriers Bureau, 1017 Walnut Street, Des Moines, Iowa; J. D. Hughett, Agent, 1805 Sante Fe Building, Dallas, Texas; and D. C. Stone, General Manager, Rocky Mountain Motor Tariff Bureau, Inc., 627 Denham Building, Denver, Colorado.

THAT THE FOLLOWING DOCUMENT, EXHIBITED WITH THIS REQUEST, IS GENUINE

Letter dated July 7, 1941 having reference to permission for the substitution of rail for motor service addressed by W. P. Bartel, Secretary of the Interstate Commerce Commission, to Messrs. I. C. Bailey, Agent, 150 Causeway Street, Boston, Mass.; W. L. Meyers, Chief, Section of Tariffs, Central States Motor Freight Bureau, Inc., Chicago, Ill.; C. E. Bellew, Assistant Secretary, Western Trunk Line Common Carriers Bureau, 1017 Walnut Street, Des Moines, Iowa; J. D. Hughett, Agent, 1805 Sante Fe Bldg., Dallas, Texas; and D. C. Stone, General Manager, Rocky Mountain Motor Tariff Bureau, Inc., 627 Denham Building, Denver, Colorado.

CLAUDE WILLIAMS
Of Counsel for Petitioner
505 Republic Bank Building
Dallas, Texas

86 RDH:CG

INTERSTATE COMMERCE COMMISSION
OFFICE OF THE SECRETARY
WASHINGTON

July 7, 1941

W. P. BARTEL
Secretary

MR. I. C. BAILEY, Agent, 150 Causeway Street Boston, Mass.	Permission R-M No. 2254, M No. 18835 (Amendment No. 13)
MR. W. L. MEYERS, Chief, Section of Tariffs, Central States Motor Freight Bureau, Inc., Chicago, Ill.	Permission R-M No. 2320, M No. 19048 (Amendment No. 11)
MR. C. E. BELLEW, Assistant Secretary, Western Trunk Line Common Carriers Bureau, 1017 Walnut Street, Des Moines, Iowa.	Permission R-M No. 2408 (Amendment No. 10)
MR. J. D. HUGHETT, Agent 1805 Sante Fe Bldg., Dallas, Texas.	Permission R-M No. 2418 (Amendment No. 10)
MR. D. C. STONE, General Manager Rocky Mountain Motor Tariff Bureau, Inc. 627 Denham Building, Denver, Colo.	Permission R-M No. 2615 (Amendment No. 9)

Gentlemen:

The permissions referred to above authorize departures from the various Tariff Circular rules to permit publication of tariffs providing for the substitution of rail or water carrier service, as the case may be, for motor carrier service.

The amendments referred to in connection with each permission permit motor carriers whose Certificates of Public Convenience and Necessity limit the operation of the motor carrier to service between stations on the line of a common carrier by rail or water, which is auxiliary or supplementary to the service of such rail or water carrier and which certificates also limit the transportation to be performed by the motor carrier to that which is a part of through transportation in connection with a prior or sub-

sequent movement by such rail or water carrier, to provide for the substitution of rail or water carrier service for motor carrier service until August 19, 1941.

This is to advise that no further extension of this authority will be granted unless motor carriers operating under certificates restricted in the manner above described can show cause why it should be further extended. Any carriers requesting a further extension must show what steps are being taken or will be taken to have their operating rights determined by the Commission.

Respectfully,

W. P. BARTEL
Secretary

Copy

87 In United States District Court

Answer of United States to Petitioner's Request for Admissions Under Rule 36 —Filed Aug. 2, 1949

United States of America for answer to request for admissions filed by petitioner herein, under rule 36, says:

3-9. That it is informed and believes that the statements of fact in requests numbered 3 to 9, inclusive, are true, and are therefore admitted.

10. That it is informed and believes that the statements in request numbered 10, excepting as it relates to railroad-owned or controlled motor carriers, is true, and is therefore admitted.

12. That it is informed and believes that the statements in request numbered 12 are true, and are therefore admitted.

JAMES E. KILDAY
WILLIAM D. MCFARLANE
Special Assistants to the Attorney General
PATRICK C. MULLEN
FRED R. HANLON
Special Attorneys

TOM C. CLARK
Attorney General

HERBERT A. BERGSON
Assistant Attorney General

(s) FRANK B. POTTER
Frank B. Potter
United States Attorney

(s) O. MORRIS HARRELL
O. Morris Harrell
Assistant United States Attorney

88 In United States District Court

Answer of Interstate Commerce Commission to Petitioner's Request for Admissions Under Rule 36—Filed Aug. 4, 1949

The Interstate Commerce Commission for answer to Request for Admissions filed by Petitioner herein, under Rule 36, says:

3-9. The statements of fact in Requests numbered 3 to 9, inclusive, are admitted.

10. Excepting railroad-owned or controlled motor carriers from the admission, the Commission admits the statement to Request numbered 10.

12. The statements in Request numbered 12 are admitted.

INTERSTATE COMMERCE COMMISSION,
By: H. L. UNDERWOOD
Assistant Chief Counsel,
3329 Interstate Commerce Comm.,
12th St. & Constitution Avenue,
Washington 25, D. C.

DANIEL W. KNOWLTON
Chief Counsel,
Interstate Commerce Commission,
Of Counsel.

August 1, 1949.

89 I, H. L. Underwood, Attorney for defendant Interstate Commerce Commission, in the above-entitled action, hereby certify that I served the attached Answer to Request for Admissions upon each party to this action by mailing a copy thereof on the 1st day of August, 1949, to each of the following attorneys:

JOHN C. ROBERTSON, ESQ.,
Republic Bank Building,
Dallas, Texas.
Attorney for Petitioner.

WILLIAM D. MCFARLANE, ESQ.,
Special Assistant to the Attorney General,
Department of Justice,
Washington 25, D. C.
Attorney for United States of America.

H. L. UNDERWOOD

90 In the United States District Court

Motion for Leave to Intervene
—Filed Nov. 11, 1949

Now Comes the Regular Common Carrier Conference of the American Trucking Associations, Inc., through its attorneys, and respectfully moves this Court for an order permitting it to intervene herein as a party. This motion is based upon the following grounds:

I

Section 2323, Title 28, U. S. Code, provides that any party in interest to a proceeding before the Interstate Commerce Commission, in which an order or requirement is made, may appear as a party of its own motion and as of right, and be represented by its counsel, in any judicial action involving the validity of such order or requirement, or any part thereof, and the interest of such party. Said section further provides that "Communities, associations, clubs, firms and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid actions, may intervene in said action at any time after commencement thereof."

Rule 24(a) of the Federal Rules of Civil Procedure provides for intervention as a matter of right when a statute of the United States confers an unconditional right to intervene.

II

That Regular Common Carrier Conference of the American Trucking Associations, Inc. is an association consisting of regular route common carriers of property by motor vehicle, members of American Trucking Associations, Inc., a non-profit corporation constituting the national organization of the trucking industry. The said Conference is organized primarily to foster, protect and defend the interests of regular route common carrier members of the trucking industry, and to advance such interests through cooperation and organization. The principal office of such Conference is located in the City of Washington, District of Columbia.

91 III

The Regular Common Carrier Conference of the American Trucking Association, Inc., was a party to, and participated in, the proceeding before the Interstate Commerce

Commission which resulted in the order, review of which is sought by Petitioner by its Complaint in the above entitled cause of action.

IV

Said Complaint seeks to enjoin, set aside, annul and suspend an order of the Commission entered Jan. 22, 1948, in a proceeding entitled Docket No. 50544 and 15 various sub-numbers, which order by its terms restricts motor carrier operating rights, granted by the Interstate Commerce Commission to the Texas and Pacific Motor Transport Company, to service which is auxiliary and supplemental to the railroad operations of Texas and Pacific Railway Company, and provides certain conditions designed to insure service within the foregoing restriction.

V

Petitioner by its complaint and supporting brief has represented to this Honorable Court that the aforesaid restriction is contrary to applicable provisions of the Interstate Commeree Act and beyond the power of the Interstate Commerce Commission to impose. It is the position of Regular Common Carrier Conference of the American Trucking Association, Inc. that the aforesaid restriction is not only within the power of the Interstate Commerce Commission to impose but is a duty and a requirement imposed upon the Commission by the Interstate Commerce Act. It was in behalf of certain conditions imposed pursuant to said duty and requirement that the said Conference intervened in the proceeding before the Commission which resulted in the order here under review, and it is in behalf of its interests in judicial recognition of the validity of the said statutory duty and requirement and the Commission's power to impose the aforesaid conditions that the Conference seeks intervention in this Court proceeding.

VI

Intervention by the Regular Common Carrier Conference of American Trucking Association, Inc., will not broaden the issues already before the Court in this proceeding.

Wherefore, Regular Common Carrier Conference of American Trucking Association, Inc., on its own behalf and on behalf of its members, prays leave to intervene in this cause of action and to be treated as a party defendant herein, with the right to have notice of and participate in

any further proceedings, including the right to file an answer to Petitioner's Complaint herein, and to be
92 heard by counsel upon brief and oral argument. An Answer to the Complaint is attached hereto.

Respectfully submitted,

CALLAWAY & REED
BY FRANK C. BROOKS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition to Intervene and Answer of Regular Common Carrier Conference of American Trucking Associations, Inc. was served upon all parties of record in this proceeding by delivering copies thereof this day of November, 1949 to the following named counsel for each of said parties:

J. T. SUGGS
Texas and Pacific Building
Dallas, Texas

JOHN C. ROBERTSON
Republic Bank Building
Dallas, Texas
Attorneys for Petitioner, The Texas and Pacific Motor Transport Company

WILLIAM D. MCFARLANE
Special Assistant to the Attorney General
Department of Justice
Washington, D. C.

E. L. UNDERWOOD
Assistant Chief Counsel
Interstate Commerce Commission
Washington 25, D. C.

FRANK C. BROOKS
Frank C. Brooks
305 Empire Bank Bldg.
Dallas 1, Texas

93 In United States District Court

Motion for Leave to Intervene—Filed Nov. 9, 1949

Comes now the Railway Labor Executive ' Association through its attorneys and respectfully moves this Court for an order permitting it to intervene herein as a party defendant. This motion is based upon the following grounds:

I

Section 2323 Title 28 United States Code provides that any party in interest to a proceeding before the Interstate Commerce Commission, in which an order or requirement is made, may appear as a party of its own motion and as of right, and be represented by its counsel, in any judicial action involving the validity of such order or requirement, or any part thereof, and the interest of such party. Said section further provides that "Communities, associations, clubs, firms and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections [Sections 2321-2323], may intervene in said action at any time after commencement thereof."

Rule 24(a) of the Federal Rules of Civil Procedure provides for intervention as a matter of right when a statute of the United States confers an unconditional right to intervene.

94

II

The Railway Labor Executives' Association is a voluntary unincorporated association with which are affiliated the following standard international railway labor organizations:

Brotherhood of Locomotive Firemen & Enginemen
Order of Railway Conductors of America
Switchmen's Union of North America
Order of Railroad Telegraphers
American Train Dispatchers' Association
Railway Employes' Department, A. F. of L.
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders & Helpers of America
International Brotherhood of Blacksmiths, Drop Forgers and Helpers
Sheet Metal Workers' International Association
International Brotherhood of Electrical Workers
Brotherhood Railway Carmen of America
International Brotherhood of Firemen & Oilers
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen of America
National Organization Masters, Mates & Pilots of America

National Marine Engineers' Beneficial Association
International Longshoremen's Association
Hotel & Restaurant Employees and Bartenders International Union
Railroad Yardmasters of America

The principal office of the Railway Labor Executives' Association is located in the city of Washington, District of Columbia.

III

The Railway Labor Executives' Association was a party to, and participated in, the proceeding before the Interstate Commerce Commission which resulted in the order review of which is sought by Petitioner by its Complaint in the above entitled cause of action.

IV

The said Complaint seeks to enjoin, set aside, annul and suspend an order of the Commission entered January 22, 1948, in a proceeding entitled Docket No. MC-50544 and fifteen various sub-numbers, which order by its terms restricts motor carrier operating rights, granted by the Interstate Commerce Commission to the Texas and Pacific Motor Transport Company, to service which
95 is auxiliary and supplemental to the railroad operations of the Texas and Pacific Railway Company, and provides certain conditions designed to insure service within the foregoing restriction.

V

Petitioner by its Complaint and supporting brief has represented to this Honorable Court that the aforesaid restriction is contrary to applicable provisions of the Interstate Commerce Act and beyond the power of the Interstate Commerce Commission to impose. It is the position of the Railway Labor Executives' Association that the aforesaid restriction is not only within the power of the Interstate Commerce Commission to impose but is a duty and a requirement imposed upon the Commission by the Interstate Commerce Act. It was in behalf of certain conditions imposed pursuant to said duty and requirement that the Railway Labor Executives' Association intervened in the proceeding before the Commission which resulted in the order here under review, and it is in behalf of its interest in judicial recognition of the validity of the said statutory duty and requirement and the Commission's

power to impose the aforesaid conditions that the Railway Labor Executives' Association seeks intervention in this court proceeding.

VI

Intervention by the Railway Labor Executives' Association herein will not broaden the issues already before the Court in this proceeding.

WHEREFORE, the Railway Executives' Association on its own behalf and on behalf of its individual members prays leave to intervene in this cause of action and to be
96 treated as a party defendant herein, with the right to have notice of and participate in any further proceedings, including the right to file an answer to petitioner s Complaint herein, and to be heard by counsel upon brief and oral argument. An Answer to the Complaint is attached hereto, and a brief in support of our position will be filed with the Court at the time of oral argument.

Respectfully submitted,

/s/ HARMON L. WATKINS
HARMON L. WATKINS
311 Southland Life Building
Dallas 2, Texas

/s/ EDWARD J. HICKEY, JR.
EDWARD J. HICKEY, JR.
620 Tower Building
Washington 5, D. C.
Attorneys for Intervenor
Railway Labor Executives' Association

Of Counsel:
Mulholland, Robie, McEwen & Hickey
620 Tower Building
Washington 5, D. C.

Dated: November 9, 1949

97 CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Petition to Intervene and Answer of the Railway Labor Executives' Association was served upon all parties of record in this proceeding by mailing copies thereof this 8th day of November, 1949, to the following named counsel for each of said parties:

J. T. SUGGS, ESQUIRE
Texas & Pacific Buliding
Dallas, Texas

JOHN C. ROBERTSON, ESQ.
Republic Bank Building
Dallas, Texas
Attorneys for Petitioner, The Texas and Pacific Motor Transport Company

WILLIAM D. MCFARLANE, ESQUIRE
Special Assistant to the Attorney General
Department of Justice
Washington, D. C.

H. L. UNDERWOOD, ESQUIRE
Assistant Chief Counsel
Interstate Commerce Commission
Washington 25, D. C.

/s/ EDWARD J. HICKEY, JR.
EDWARD J. HICKEY, JR.
620 Tower Building
Washington 5, D. C.

November 8, 1949

98 In United States District Court

Order on Motion for Leave to Intervene of Regular Common Carrier Conference of American Trucking Associations, Inc.—Filed Nov. 11, 1949

There having been presented to the Court the Motion of Regular Common Carrier Conference of American Trucking Associations, Inc. to intervene in the above entitled and numbered cause, and it appearing to the Court that said Motion should be granted, IT IS HEREBY ORDERED by the Court that said Motion be granted and that said Regular Common Carrier Conference of American Trucking Associations, Inc., shall have the right to forthwith file an answer to Petitioner's Complaint herein and to be heard by counsel as prayed in said Motion.

MADE AND ENTERED this 11th day of November, A. D., 1949.

(s) E. R. HOLMES
(s) BEN C. DAWKINS
(s) WM. H. ATWELL
Judges of said Court

99 In United States District Court

Order Granting Leave to Intervene—
Filed Nov. 10, 1949

This cause coming on to be heard on the 10th day of November, A. D. 1949, on the petition of Railway Labor Executives Association for leave to intervene and answer in the above-entitled suit and to be made a party defendant thereto, and the petition having been duly considered and it appearing to the court that Railway Labor Executives Association has an interest in the above-entitled suit sufficient to warrant it to become a party to this suit:

It Is Therefore Ordered, Adjudged and Decreed that Railway Labor Executives Association be and it hereby is granted leave to intervene and answer in said suit as a party defendant and to defend this cause in accordance with the prayer of its petition.

Dated 10 day of Nov. A. D. 1949.

Wm. H. Atwell
United States District Judge

101 In the District Court of the United States
Northern District of Texas
Dallas Division

The Texas & Pacific Motor Transport Co., petitioner

vs.

The United States of America and Interstate Commerce Commission, defendants

No. 3696, Civil

Transcript of Testimony and Proceedings

Be it Remembered, that on the 11th day of November, A. D., 1949, the above styled and numbered cause came on for hearing before:

Honorable Edwin R. Holmes, Judge, U. S. Court of Appeals, Fifth Circuit,

Honorable William H. Atwell, Judge, U. S. District Court, Northern District of Texas, Dallas Texas,

Honorable Benjamin C. Dawkins, Judge, U. S. District Court, Western District of Louisiana, Monroe, Louisiana,

whereupon the following proceedings were had:

102 APPEARANCES:

J. T. Suggs, D. L. Case, Robert Thompson, William R. McDowell, J. L. Lancaster, Jr., W. O. Reed, Claude Williams, William Duncan, Dallas, Texas, Attorneys for Petitioner.

W. D. McFarlane, Special Assistant to the Atty. Gen'l, Washington, D. C.; Harry Underwood, Attorney for Interstate Commerce Commission, Washington, D. C.; O. Morris Harrell, Assistant United States Attorney, Dallas, Texas, Attorneys for Defendant.

Ed. J. Hickey, Jr., Washington, D. C., Harmon L. Watkins, Dallas, Texas, Attorneys for Intervener, Railway Labor Executives Association.

O. D. Montgomery, Frank C. Brooks, Dallas, Texas, Attorneys for Intervener, Regular Common Carrier Conference of the American Trucking Associations, Inc.

103 PROCEEDINGS

Colloquy Between Court and Counsel

Judge HOLMES: Call the case of Texas & Pacific Company. Are both sides ready? Is there any testimony to be introduced?

Mr. SUGGS: Yes, if the Courts please.

Mr. HARRELL: If the Courts please, may I present Mr. William D. McFarlane, Special Assistant to the Attorney General, and Mr. H. B. Underwood, Assistant Chief Counsel for Interstate Commerce Commission? Both of these gentlemen have been admitted to practice before the United States District Court and various United States Courts of Appeals, and United States Supreme Court, and will present the case for the defendants.

Judge HOLMES: We will be very glad to have them.

Mr. WATKINS: May it please the court, I should like to introduce Mr. Edward J. Hickey, a member of the Bar of the District of Columbia, and the Supreme Court of the United States? We are representing intervener defendants, the Railway Labor Executives Association.

Judge HOLMES: If both sides are ready?

Mr. BROOKS: May it please the courts, I have given to the clerk a petition of intervention on behalf of the Regular Common Carrier Conference of the American Trucking Association, seeking permission to intervene on behalf of the Defendants in this case. I have also prepared
104 an order, and if the Court finds it to be in proper form, I would like to have it signed, and permission granted in such form necessary.

Judge HOLMES: Any objections?

Mr. SUGGS: No, sir.

Judge HOLMES: I have no objection, it will be done.

Mr. HICKEY: May it please your Honors, appearing on behalf of the Railway Labor Executives Association, another intervener in this case on behalf of the Commission's order, we have previously presented a motion to intervene to the court, and as I understand it was acted upon favorably yesterday.

Judge ATWELL: That intervention has been granted.

Mr. HICKEY: I see.

Judge HOLMES: If there are no other interventions?

Mr. SUGGS: If the court please, on behalf of the complainants, we would like leave to, by way of trial amendment, and if your Honors will permit, by interlineation, to correct two typographical errors in the complaint. One is on page 2.

Judge HOLMES: I will have to get my papers.

Mr. SUGGS: On page 2, of the complaint, in the 10th line from the top, the date appears January 28, that should be January 22.

Judge HOLMES: All right.

Mr. SUGGS: And on page 12 of the complaint,
105 which is a tabulation, in the second item, in the second column—

Judge DAWKINS: What page is that?

Mr. SUGGS: This is on page 12.

Judge DAWKINS: All right.

Mr. SUGGS: The date 3-8-37, correctly should be 3-18-37. And, in the third column, there should be a date, 5-31-39.

Mr. MCFARLANE: That 10-21-41?

Mr. SUGGS: Yes, sir.

Judge DAWKINS: What is your heading for that last entry?

Mr. UNDERWOOD: It is the fourth column, isn't it?

Mr. SUGGS: It is the fourth column, if your Honor please, and it should be an additional date.

Judge DAWKINS: All right, it will be in Subject No. 2?

Mr. SUGGS: Yes, sir, Sub No. 1 of the particular case.

Judge HOLMES: What is the date?

Mr. SUGGS: Sir?

Judge HOLMES: What is the date?

Mr. SUGGS: 5-31-39.

Mr. MCFARLANE: Is that in lieu of 10-31-41, or in addition?

Mr. SUGGS: No, in addition.

106 Judge HOLMES: Proceed, then.

Mr. SUGGS: Yes, sir.

If the Courts please, at this time we should like to comment to the court on our first offering of evidence, which consists of the records before the Interstate Commerce Commission.

Judge HOLMES: Wait a minute. Are you offering your evidence now? Just put it in the form that you offer it.

Mr. SUGGS: We just want to comment on how we have it put up for your Honors, if we may have the courts' indulgence. It reflects something over ten years of administrative proceedings, and necessarily is bulky. It is separated according to the various particular certificate cases which we have labeled, and what we consider significant items in the record we have inserted markers in these bundles. The bundles are rather awkward and a little difficult to handle.

We have keyed an index to those markers, of these various bundles.

Since one of our attacks on the order is that it is not supported by evidence, it becomes necessary for us to offer the entire record, and we offer it at this time.

Judge HOLMES: No objection. Let it be admitted.

Mr. SUGGS: In addition to the record, we should like to offer in evidence certain decisions by the Interstate

107 Commerce Commission, which we tender in evidence on the question of the Commission's intent, in some particular words which will be presented to the court in due course.

We would like to offer in evidence the Commission's decision in Pennsylvania Truck Lines, Inc., acquisition of control of Parker Motor Freight, Inc., decided October 8, 1936.

A decision in the same case, handed down March 6, 1937.

That is the much cited Parker case.

Will you hand that to the court, please?

We offer in evidence the commission's decision in the Southwestern Transportation Company purchase case, Hill and Howell, 37 MGG at page 83, decided July 22, 1941.

That case we thought we had a pamphlet on, if your Honors please. We do not have it. We can supply it if the court will permit, and if counsel have no objection, we would like to have leave to supply that pamphlet. We have a permanent volume we can mutilate if it is required.

We would like to offer the Commission's decision in Southern Pacific Company control Pacific Motor Trucking

Lines, Pacific Motor Trucking Company purchase, Fallon Motor Lines, decided December 23, 1943.

We offer in evidence the dissenting opinion of three Commissioners in the case of Rock Island Motor Transit Company purchase, White Line Motor Freight Company,
108 decided March 3, 1946. On that decision, we offer only the dissent.

Mr. Underwood: If your Honors please, I think he ought to put in the whole thing.

Mr. Suggs: Counsel has that option, of course, to supplement the offer, and we will offer no objection, if he will accept the responsibility for it.

Judge Holmes: It is very little to offer the whole thing.

Mr. Underwood: I will, if I may, I will offer it. I haven't it here.

Mr. Suggs: It is all here, Mr. Underwood, it is all in the pamphlet.

Judge Holmes: Just let it be understood he is offering the decision, you are offering the dissent.

Mr. Suggs: We offer in evidence the first six pages, and the first three paragraphs on page 7, of the decision of the Interstate Commerce Commission in Pennsylvania Truck Lines extension, decided January 6, 1948. I may say that is the last chapter available of the Parker case.

The only reason we leave out the balance of that opinion, it is just unnecessary bulk. Is that agreeable?

Judge Holmes: That is often true.

Mr. Suggs: Counsel won't want the rest of it, if your Honors please.

Mr. Underwood: If your Honors please, there are
109 a number of subdivisions, sub-cases on that and the bulk of it is fifty pages, of this size, I am sure you don't want to be bothered with that, because a lot of it is not material here, a great deal of it is not material here, because it doesn't pass on the particular point, I think counsel is trying to establish.

Mr. Suggs: The point we are both interested in is the part we have offered.

Mr. Suggs: That concludes our documentary evidence that we offer at this time.

We would like to present a witness to the court.

Mr. Lancaster: We will have Mr. C. S. McDonald, please.

Judge Holmes: All right.

C. S. McDONALD, a witness produced on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. LANCASTER:

Q. You are C. S. McDonald?

A. Yes, sir.

Q. And you are employed by the Texas & Pacific Motor Transport Company, are you not?

A. Yes, sir.

110 Q. For how long have you been employed by that company?

A. About ten years.

Q. What other experience have you had in the transportation field?

A. Well, almost twenty-one years' experience with the Sante Fe Railroad, the Texas & Pacific Railway.

Q. What is your present title with the T & P Motor Transport Company?

A. General Freight Agent.

Q. What do the books of the T & P Motor Transport Company show its investment to be in the three purchase certificates involved here?

A. $88,704.00, both as to—

Q. Is that inter and intrastate both?

A. Yes, sir, both.

Q. What do the books of the T & P Motor Transport Company show its investment to be in the remainder of its certificate involved here?

A. $7,970.18.

Mr. McFARLANE: Just a moment, your Honors. We would like at this time to object to this line of testimony.

Judge HOLMES: I overrule the objection.

Mr. McFARLANE: I beg your pardon?

Judge HOLMES: Overrule the objection.

Mr. McFARLANE: We would like to—

111 Mr. UNDERWOOD: We do it, your Honors, on the basis of the fact apparently this goes into the question of confiscation, that is the purpose of this evidence, as I understand it, and we rest on the decision of the Supreme Court in 331 United States, Huff against the United States, where the Commission said that evidence of confiscation was not presented to the Commission, and therefore it should not be received by the court, as on *de novo*.

Judge HOLMES: I ruled on the objection.

Mr. UNDERWOOD: Note our exception.

Judge HOLMES: Note the exception.

Q. (By Mr. LANCASTER) What is the present net book value of the business, trucks, and other transportation facilities?

A. $264,716.36.

Q. What was your net income, before taxes, for the year 1948?

A. $118,808.06.

Q. What was it after taxes?

A. $69,959.41.

Q. Mr. McDonald, have you read all of the record before the Interstate Commerce Commission in the proceedings involved here?

A. Yes, sir.

Q. Did you participate in most of those proceedings?

112 A. Yes, sir, I did.

Q. Do you know of your own knowledge the various dates on which Highway operations were actually instituted under each of the certificates here involved?

A. Yes, sir.

Q. Now, identifying the several certificates by their numbers or sub-numbers in the commission, please tell the court those dates?

A. Well, in the case of certificate 50544, which is a title case, we instituted interstate highway operations on September 16, 1935.

In the Sub-No. 1, certificate, we instituted those operations on September 26, 1935, as to a portion of the route, that is, between Shreveport and Cypress, Louisiana, and then for the balance of the route, we instituted the operation on January 12, 1939.

Now, the Sub-2 certificate operations were instituted July 19, 1939.

In the Sub-3 certificate, July 19, 1939.

In Sub-4 certificate, January 6, 1940.

In Sub-5 certificate, June 11, 1937.

In Sub-6 certificate, June 11, 1937.

In Sub-7 certificate, December 10, 1941.

In Sub-8 certificate, September 5, 1938.

In Sub-9 certificate, July 6, 1940.

113 In the Sub-10 certificate, October 13, 1941.

In the Sub-11 certificate, May 8, 1942.

Now, in the Sub-12 certificate, September 24, 1941, in the case of serving the Red River Ordnance Depot, and Sep-

tember 29, 1941, in the case of serving the Lone Star Shell Loading Plant, both of which are near Texarkana, Texas, about sixteen to twenty-one miles; the balance of the operation was instituted April 7, 1942.

The Sub-14 certificate, May 9, 1941.

Sub-19, certificate, December 28, 1941.

Sub-22 certificate, we never did start those operations, because we didn't have any authority from the Railroad Commission of Texas, to use the Highway.

Q. Now, will you please state whether or not the transportation company adopted the tariff of its vendors in the cases of the three purchase certificates in compliance with the rules of the commission then in force?

A. It did.

Mr. LANCASTER: At this time, if the court please, we would like to introduce in evidence the rules of the commission covering the adoption by a common carrier motor carrier of the tariffs of its vendors.

Q. (By Mr. LANCASTER) Now, do you know of your own knowledge whether the transport company actually filed common carrier motor carrier certificates or tariffs
114 with the commission under each of those certificates?

A. Yes, it did, except in the case of the Sub-11 certificate which covered the operations between Pecos and El Paso, Texas.

Q. Do you know the effective dates of the motor carrier tariffs which were filed with the Commission?

A. Yes, I do.

Q. Now, again identifying the certificates by their numbers or sub-numbers in the Commission, give those dates, please, sir?

A. Yes, sir. In the title case, MC 50544, we first filed Interstate Motor Carrier Tariffs April 1, 1936.

In Sub-1 certificate, April 1, 1936, in so far as the portion of the route between Shreveport, Louisiana and Cypress, Louisiana is concerned: for the balance of the route, we filed tariffs effective September 27, 1939.

In the case of the Sub-2 certificate, September 27, 1939.

In the case of the Sub-3 certificate, September 27, 1939.

In the case of the Sub-4 certificate, March 15, 1940.

Judge HOLMES: Did you allege those dates?

Mr. LANCASTER: Yes, your Honor.

Judge HOLMES: Are they admitted?

Mr. MCFARLANE: I didn't understand the question?

Mr. LANCASTER: No, sir, they are not admitted in the answer.

115 Mr. McFarlane: We object to all of this, we want our bill to cover all of this, your Honor.

Judge Holmes: Yes, if they are not admitted in the answer, we will go ahead.

A. In the case of Sub-5 certificate, June 11, 1937.

In the case of the Sub-6 certificate, June 11, 1937.

In the case of the Sub-7 certificate, no publication was necessary there, because that was an alternate routing and the rates had already been published under the primary certificate.

In the case of Sub-8, September 5, 1938.

In the case of Sub-9, July 6, 1940.

In the case of Sub-10, no publication was made, because there was none necessary in that the route was an alternate route, and the rates had already been published under the primary certificate.

In the case of Sub-11, we made no motor carrier publication of the rates, because of the restrictions placed in the certificate by the Commission, preventing the physical movement of substantially all of the available traffic.

In the case of Sub-12 certificate, we published rates first effective September 7, 1941, to the Red River Ordnance Depot. That was done under special permission of the Interstate Commerce Commission on one day's notice. The Lone Star Shell Loading plant, we published rates effective

116 September 23, 1941, also under special permission of the Interstate Commerce Commission on one day's notice. To the balance of the points, we published rates May 11, 1942; that was also on the special permission of the Interstate Commerce Commission, on ten days' notice.

Mr. Underwood: I am sorry to interrupt, I can't hear some of your testimony.

Q. (By Mr. Lancaster) Speak a little louder, please, speak a little louder.

A. Yes, sir. In the case of Sub-14, May 8, 1941. That publication was also made on one day's notice, under special permission of the Interstate Commerce Commission.

In the case of Sub-19, December 22, 1941. Those rates were also published on one day's notice under special permission of the Interstate Commerce Commission.

In the case of Sub-22, we made no publication, because that was an alternate route, the rates had already been published to and from the point authorized to be served by primary routes. We did not institute an operation over that route anyway.

Mr. LANCASTER: At this time, we would like to offer in evidence certified copies of the tariffs filed with the Interstate Commerce Commission.

Mr. UNDERWOOD: I have objected to relevancy, I can't see what the relevancy they have to this hearing, to the particular issue of this particular case, because of the
117 fact that they were authorized—because they had filed tariffs, that does not necessarily prove they were authorized to do the thing we say they are now doing, and which we say is outside the scope of their authority.

Judge HOLMES: I will note your objection and exception.

Q. (By Mr. LANCASTER) Now, Mr. McDonald, do the purchase certificates issued in Sub-Nos. 5, 6, and 8, covering the route to Shreveport, Gladewater, Wills Point to Dallas, Dallas to Abilene, Abilene to Big Spring, do those have a cash market value?

A. Yes, sir, they do.

Q. What is the cash market value?

A. $35,500.00.

Mr. MCFARLANE: We object to that.

Judge HOLMES: Just a second, state your objection.

Mr. MCFARLANE: It is irrelevant and immaterial, it has no bearing on any issue involved in this case; and, all this line of testimony, nothing of this line of testimony was offered before the Commission. For that reason, we object to the introduction of any of this testimony in this case at this time, under the New York decision of the Supreme Court of the State.

Judge HOLMES: Overruled.

Q. (By Mr. LANCASTER) Now, do you know the cash
118 market value of the Interstate Certificates, other than the purchase certificate?

A. Yes, sir, I do.

Q. Tell us about that, please, sir?

A. Well, I will have to explain, first, in order to get it in my answer, that all these certificates which carry the prior or subsequent rail haul restrictions, in my opinion, have no cash market value. Now, the Sub-2 and 7 certificates, by themselves, have no cash market value. But when combined with the purchase certificates, they do have a cash market value.

Q. What would that combined value be?

A. That combined value would be $65,000.00.

Mr. MCFARLANE: Just a minute, your Honors. I would like to make the further objection to this witness testifying

to the market value of these certificates, equipment, and so forth, because it is not shown that he is qualified, that he is qualified as a witness to testify covering these matters.

Judge HOLMES: Overrule the objection.

Mr. LANCASTER: He said he knew, your Honor.

Judge HOLMES: If he knows about it, I will permit it.

A. Yes, sir, I have had thirty-one years railroad experience and truck experience in the transportation field; I am about as familiar with it as anybody else around here.

119 Judge HOLMES: I will overrule it.

Q. (By Mr. LANCASTER) Now, have you determined the gross revenue of the petitioner earned from Interstate Transportation performed under its own bills of lading for the twelve months period from October 28, 1947 to October 29, 1949, inclusive?

A. Yes, sir.

Q. What is that figure, please, sir?

A. $247,062.38.

Q. Are you also familiar with the Interstate Tonnage handled during that period on its own bills of lading?

A. Yes, sir, I am.

Q. Now, Mr. McDonald, if the Texas & Pacific Motor Transport Company is forced to discontinue issuing its own bills of lading, and is forced to discontinue publishing its own common carrier motor carrier rates, and is forced to discontinue holding itself out as being ready, willing and able to handle commodities as a common carrier motor carrier, and transport for the public generally, and is forced to discontinue performing any service other than service for the Texas & Pacific Railway Company, what, if anything, will happen to that Revenue and tonnage?

A. Well, it will lose all of its interstate revenue and all of its interstate tonnage.

Q. Now, if you are forbidden to interchange with
120 other common carriers, under through routes and joint rates, what effect will that have on your revenue?

A. That will materially reduce the revenue.

Q. Now, do you believe the twelve months period just testified about fairly represents what you could be expected to do in the fairly forseeable future?

A. Yes, sir, I do.

Q. Now, if you lose the Interstate Revenue, please tell us whether or not in your opinion your company can continue to operate at a profit?

A. It very definitely could not.

Mr. LANCASTER: At this time we would like to introduce into evidence the common carrier certificates issued by the States of Texas, Louisiana, and the permits of those states for us to do business in them.

Mr. MCFARLANE: We object to the introduction of all of this testimony, your Honor, as immaterial and irrelevant, and has no bearing on the issue in this case, this is not a trial *de novo*, our objection extends to each and all of them.

Q. (By Mr. LANCASTER) Now, Mr. McDonald, how much money did you earn under your own bills of lading, from intrastate transportation during that period?

A. $1,710,473.34.

Q. Now, Mr. McDonald, if the auditors of the Interstate Commerce Commission in question here were not
121 enjoined by this court, will you please tell us what effect that will have on your intrastate business?

A. That will materially reduce our intrastate business.

Q. Explain to the court how that would happen, how it would effect your intrastate business?

A. Because many shippers make motor carrier shipments in the same direction to both state and interstate points, and they will do business the easiest way, that is, they will call a motor carrier who can handle both types of shipments.

Q. All right, Sir. Now, assuming the loss of your interstate business, which is an almost foregone conclusion, and assuming you are correct you are going to lose a good part of your intrastate business, now, tell us, under those circumstances whether or not the TP Motor Transport Company can realize the maximum utility of its transportation facilities?

A. No, it could not.

Q. Why not?

A. Well, because they would have to operate about the same number of trucks over about the same number of miles it is presently operating, carrying lesser tonnage; in other words, we would have to maintain our present facilities for a smaller volume of business.

Q. Are you familiar with the key point restrictions which the Commission seeks to impose on the transport company?

A. Yes, sir.

122 Q. What will be the effect of those key point restrictions if they are allowed to stand?

A. Well, they will do away with our rights previously granted between Abilene, Dallas and Fort Worth, Texas;

they will also take away from us the right to truck freight from Shreveport to New Orleans, Louisiana, and from New Orleans to Shreveport, Louisiana.

Q. Well, will you tell the court what effect the proposed key-point restrictions will have on your operating costs and service?

A. They will unnecessarily increase the operating cost and slow down service.

Q. What are your most important distribution centers, shipping points and destinations and gateway of your TP Motor Transport Company?

A. Shreveport, Louisiana, Dallas, Fort Worth, Abilene, Sweetwater, and Big Spring, Texas, all on the purchase certificate routes.

Q. What is the importance of the purchase certificates to the TP Motor Transport Company?

A. Well, all of our interstate tonnage either originates at or terminates at points on those routes, or moves over the routes covered by the purchase certificates.

Q. Now, Mr. McDonald, before the Commission January 21, 1943 report, which is contained in the record, did
123 the transport company solicit excess shipments from the public generally under all of its certificates?

A. Yes, sir, it did, except in the case of one certificate, that being the one covered by sub-11, which is the route between El Paso and Pecos, Texas.

Q. With the exception you mentioned, was the transport company issuing its own bills of lading under all of its certificates?

A. Yes, sir, it was.

Q. Now, in addition to performing the service just described, were you also performing a substitute service for the TP Railway Company?

A. Yes, sir, we were.

Q. Now, beginning in the year 1939, did the transport company establish and maintain through routes and joint rates with other common carrier motor carriers under all the certificates it had?

A. Yes, sir, it did, and as certificates were received after '39, it established and maintained through routes and joint rates with other motor carriers.

Mr. LANCASTER: Now, at this time, if the court please, we would like to read to the court a copy of a letter written by the attorney for the Texas & Pacific Motor Transport Company to Commissioner Joseph Eastman, who was at that time Chairman of Division 5, concerning our right

124 to do this. The letter is dated May 23, 1939, addressed to Mr. Joseph B. Eastman.

Mr. UNDERWOOD: Excuse me, you are going to offer it?

Mr. LANCASTER: Yes, sir, I am.

Mr. UNDERWOOD: That is a statement which was made in response to a letter written by one of the gentlemen at T & P, as I understand it.

Mr. LANCASTER: I am going to first read the letter of the T & P.

Mr. UNDERWOOD: Yes.

Mr. LANCASTER: And then I will read the reply of Mr. Eastman.

Mr. UNDERWOOD: Mr. Eastman, without committing the Commission at all, he says in his letter he does not, he has no authority to permit operation, he expresses some private views, I submit to your Honors, the private views of one member of the Commission is not considered as controlling upon the entire Commission, and it has no value as evidence; it merely is to the effect that Mr.—that was Mr. Eastman's private opinion, not expressed in any—not expressed in any particular adjudication.

Judge ATWELL: Oh, well, let's hear what it is, let's have it.

(The letters referred to were here read.)

Mr. LANCASTER: We would like to have both of
125 those in evidence.

Mr. UNDERWOOD: I want to object to those, not only on the grounds I have stated, but also on the ground the letter addressed to the Commissioner is a self-serving document, and was written by the T & P counsel to avoid the effect of certain sworn to evidence which was given in the proceedings, and upon which the Commission relied and acted; an attempt to avoid the effect of that; that that statement is made in that that evidence was inadvertently given.

Judge HOLMES: All right.

Mr. MCFARLAND: We object for the same reasons, your Honor, and for the additional reasons that by this kind of a communication between counsel for transport and the railway company, they are trying to evade and avoid the effect of the Commission's decisions in the respective cases therein mentioned, and the testimony of the transport company themselves before the Commission on each and all of these cases in which they said they would not specifically do these things; and now they are trying to evade and avoid the effects of that on which the Commission acted and relied in rendering it's decision.

Judge ATWELL: You can get through quicker if you don't make a speech each time.

Mr. MCFARLAND: I am not trying to make a speech, I am stating my objection, and we object to them for each and all those reasons.

Judge HOLMES: I am ready to rule, after having
126 heard the documents we think the objections should be sustained.

Mr. MCFARLAND: I didn't hear what you said.

Judge HOLMES: Sustained, I said.

Mr. LANCASTER: Now, if the Court please, the part of the letter from Commissioner Eastman is in the record itself, in the record which we have introduced in evidence.

Judge HOLMES: Even if it is, it is still proper to sustain it.

Q. (By Mr. LANCASTER) Now, Mr. McDonald, in the case of those certificates which contained the condition requiring a prior or subsequent rail haul, what did the transport company do?

A. Well, you mean after—we complied with those certificates by giving a prior-subsequent rail haul by the T & P Railway and/or for its rail subsidiaries.

Q. By what authority did the transport company furnish such substituted service?

A. Why, under the authority of the Tariff commonly known as Substituted Freight Service Directory, which was published under special permission given to us by the Interstate Commerce Commission.

Q. Is that what is known as R. M. 2418?

A. That is the special commission granting the publication of that Tariff.

Mr. LANCASTER: Now, at this time, we would like
127 to introduce into evidence R. M. 2418, which was the special permission for the railway company to do that.

And, I also would like to introduce in evidence certified copies of the Substitute Freight Directory.

Judge HOLMES: All right.

Q. (By Mr. Lancaster) Well, how long did this special authority last, or, did it stay in effect, or was it nullified by the Commission?

A. Wait a minute, I believe we are confused just a little bit.

Q. R. M. 2418, did it stay in effect?

A. I misstated that, let me correct that. That was the authority—no, that is correct, that is authority for the

T & P Motor Transport Company to substitute for its service the rail service of the T & P Railway Company, that is correct.

Q. All right, was that later nullified?

A. Yes, it was.

Mr. LANCASTER: We introduce those instruments there.

Mr. MCFARLAND: Our objection, your Honors, we don't like to continue, we would like our objection to cover each and all these matters.

Mr. LANCASTER: At this time we wish to introduce in evidence a copy of Secretary Bartel's letter of July 7th, this has been covered by admission.

Q. (By Mr. LANCASTER) Now, after you received
128 Secretary Bartel's letter of July 7th, what did you do?

A. Well, that is when we filed our petition asking the Commission to define certain of our rights, our petition of August 7, 1941.

Q. After the Commission refused to vacate its report of January 21, 1943, what did the transport company do in connection with its participation in motor carrier tariffs?

A. Well, we started removing from those motor carrier tariffs those portions of the T & P Motor Transport Company that were covered by certificates, to which were attached, auxiliary to and supplementary of rail haul restrictions.

Q. Well, did the transport company ever undertake to take out of truck tariffs those portions covered by the purchase certificates?

A. No, sir, it did not.

Q. Now, Mr. McDonald, if the Commission's present order, the one that is here under attack, is allowed to take effect, will you have to remove those certificates?

A. Yes, sir, we will.

Q. When the transport company began removing itself from the motor carrier tariffs, what, if anything, did the railroad do?

A. Well, the railway asked for and received special permission from the Interstate Commerce Commission to become a party to the motor carrier tariffs over those
129 portions of the routes which corresponded with the portions of the routes that were being removed on account of the T & P Motor Transport Company.

Q. Has the T & P Railway Company ever sought permission to participate in motor carrier tariffs over that part of the line corresponding with the purchase certificate routes?

A. No, sir, it has not.

Q. Has the Texas & Pacific Railway Company ever sought permission to participate in motor tariffs over that part of its line corresponding with the routes covered by the purchase certificates?

A. No, sir, it has not.

Q. Now, Mr. McDonald, for a number of years past has the Texas & Pacific Railway Company been a party to the Substituted Service Directory, permitting the railway company to substitute truck for rail service?

A. Yes, sir, it has.

Mr. LANCASTER: At this time we will introduce in evidence that authority, certified copy of it.

Q. (By Mr. LANCASTER) Are you familiar with the operations of the Southwestern Transportation Company?

A. Yes, sir, I am.

Q. Who is it owned by?

A. The Cotton Belt Railroad.

Q. Does the Southwestern Transportation Com-
130 pany hold a certificate or certificates from the Interstate Commerce Commission, free of conditions which are sought to be imposed here?

A. Yes, sir, it does.

Q. Describe for the Court generally the route covered by those certificates?

Mr. UNDERWOOD: Your Honors, I don't see the relevancy of this discussion. That railroad company is not in this case, those certificates are not being called into question, and I don't see why, what their route is, has any relevancy.

Mr. LANCASTER: It is a question of discrimination.

Mr. UNDERWOOD: On the question of confiscation.

Judge HOLMES: Overrule.

Mr. MCFARLAND: We object to it further, because that is not the best evidence.

Mr. LANCASTER: We are going to offer the certified copy of it.

Q. (By Mr. LANCASTER) All right, give us the route, please, sir?

A. They operate over the route from St. Louis, Missouri to Memphis, Tennessee, to Little Rock, Arkansas, Texarkana, Ark.-Texas, Shreveport, Louisiana, Gladewater, Texas, Dallas, Fort Worth, and Tyler and Waco, Texas.

Mr. LANCASTER: At this time we offer in evidence a certified copy of the certificate owned by the South-
131 western Transportation Company.

Mr. McFarland: We object to that, your Honors, for the same reasons we objected to each and all of these other matters, they are immaterial, irrelevant and so forth, and have no bearing on the issues involved in this case, and object for each and all of those reasons.

Judge Holmes: Overruled.

Q. (By Mr. Lancaster) Are there other common carrier motor carriers owned and controlled by railroads, whose certificates are similarly free of these restrictions?

A. Yes, sir, there are.

Q. Well, name one or two of them?

A. Well, Santa Fe Trail Transportation Company, Frisco Transportation Company, Burlington Truck Lines, and the Pacific Motor Trucking Company.

Mr. Lancaster: I believe that is all, thank you.

Mr. McFarland: We object to all the line of testimony as to any other transportation companies, such as he has just given at this time for all of such reasons, and for the additional reason that it is not the best evidence, and if there is any such conditions in any such certificates operating, that would be the best evidence, and we object to it for that reason. In addition, this witness cannot testify what those conditions are, because the certificates in those cases, in each and every one of them he has mentioned,
132 would be the best evidence as to what the conditions were, and the conditions under which they were granted.

Q. (By Mr. Lancaster) Do you have those certificates with you?

A. Yes, sir, I have.

Q. Which ones of them have you?

A. I have all I just mentioned.

Q. All right, let me have them?

A. I have them back there.

Mr. Lancaster: We now offer in evidence the certificates granted by the Commission in the four common carriers that he just mentioned.

Mr. McFarland: We object to their introduction, your Honors, for each of the reasons we have just stated, because of their relevancy and materiality and so forth, there being no testimony before the Commission on each and all of these cases as to confiscation, and under the decisions of the courts, we think they are—

Judge Holmes: You don't object on the ground the certificates are not the best evidence?

Mr. McFarland: I beg your pardon?

Judge HOLMES: I say, you don't object on the ground the certificates are not the best evidence?

Mr. MCFARLAND: No. I don't know what the certificates contain.

133 Judge HOLMES: Overrule the objection. No cross examination?

Mr. UNDERWOOD: If I don't waive my objections by so doing?

Judge HOLMES: No, I guess not. Do you want to cross examine, right at this time? Do you?

• • •

Cross Examination by Mr. UNDERWOOD:

Q. Mr. McDonald, in those cases in which the certificates were just handed up to you, involving the Burlington, the Santa Fe, and some others that you mentioned, do you know what the Commission said about that, the reason for its granting of that? Wasn't it that there were special conditions in connection with the applications that were then under consideration, and in which they granted the certificates, that warranted the Commission in so doing, and those special circumstances would be recognized, the Commission said, in other cases, where they could be shown, isn't that so?

A. Well, I don't recall. I do know that they purchased a number of those routes just like we did, covered by those certificates.

Q. But, you have no information, or knowledge, or you did not even read the reports in those cases, I presume?

A. No, sir, I don't recall.

134 Q. That those were special circumstances, that the Commission said they would recognize in any cases where they were presented. Now, were you present at any of those hearings in which Mr. Hoffman—of your own hearings, in which Mr. Hoffman was the main witness for the Texas & Pacific?

A. Yes, sir, some of them, yes, sir.

Q. And did you hear his evidence as to the—in support of the application?

A. Yes, I heard him testify in those cases.

Q. Now, wasn't it a fact that Mr. Hoffman's testimony was all on the basis that this was to be a service which would be helpful to the railroads, it would be performed particularly, he emphasized the facts a car, a merchandise car could be fully loaded with less than carload shipments

and set out at a point, and then the trucks could take it and peddle it out to the small communities, practically giving them store delivery?

Mr. Suggs: If the Court please, all the testimony to which counsel refers is here in the record, and we would prefer it be read or presented verbatim, rather than by way of counsel's interpretation, so far as the evidence is concerned.

Mr. Underwood: If you want me to go into that, I am going to read it later.

Q. (By Mr. Underwood) You have spoken, Mr. McDonald, about this loss that would be entailed if your right to perform and operate as a motor carrier in general
135 was denied. Suppose the Court would—suppose that particular kind of operation was held unlawful, and without the scope of your authority, do you still think that it would be the fault of the Commission that you suffered that loss?

A. Well—

Mr. Suggs: We rather think that calls for a conclusion that the Court should answer.

Q. (By Mr. Underwood) I will state it in another way: You wouldn't think you were entitled to the operation, or to recompense for recompense for expenditures made in unlawful operations, would you?

Mr. Suggs: If your Honor please, we object to that, Counsel will state—

Judge Holmes: That question is a question of law you are asking.

Mr. Underwood: I beg your pardon?

Judge Holmes: I say, that question is a question of law you are asking.

Mr. Underwood: No, it was predicated on the proposition that if it was unlawful, and found to be unlawful, that he would not urge that he—his constitutional rights were invaded if—

Judge Holmes: I believe that would be a question for the Court.

Mr. Underwood: I think so too, and I hope we can
136 convince your Honors to our viewpoint.

Judge Holmes: I think you would have admitted most of this, that there would be serious damage in the case your orders are valid. Of course, if they are valid, then the damage would not be material.

Mr. UNDERWOOD: Yes. I am content to let the question go.

Judge HOLMES: Anyway, it is better for the Court to have all this before it.

* * *

Re-direct Examination by Mr. LANCASTER:

Q. Let me ask him one more question. Where is Tom Hoffman now, Tom Hoffman, the one he just asked about? A. He is dead.

Mr. LANCASTER: That is all.

Mr. BROOKS: May I be permitted to ask a few questions, please?

Judge HOLMES: What is that? For the intervenors?

Mr. BROOKS: Yes, sir, for the intervenors.

Judge HOLMES: Who are you intervening for?

MR. BROOKS: The regular route carriers of the American Trucking Association.

Judge HOLMES: I would prefer to just let the principals conduct this hearing, and I might allow you some
137 time for arguing, but I am not sure on that, but I don't think it would be a good idea to let the intervenors take over the cross examination.

Judge DAWKINS: Did you intervene before the Commission?

Mr. BROOKS: Yes, sir, we were a party before the Commission, sir.

Judge HOLMES: My associates say if you want to ask a few questions, to let you go ahead.

* * *

Re-cross Examination by Mr. UNDERWOOD:

Q. Before he starts, may I ask one more question, your Honor, I would like to ask one more question? That R.M. 1840—was it?

A. 2418, I believe.

Q. 2418, the question as counsel propounded it to you was T & P given authority in that particular thing to carry on that, to join in the directory, and in the service. Now, your answer, you did not mean by your answer, as I take it, that that was addressed particularly to the T & P? It was a general authorization, wasn't it?

A. No, sir, it was issued to our agent, Mr. J. D. Hewett, who publishes our tariffs.

Q. But, it was a general authorization, wasn't it?

A. It was authorization.

138 I mean you? You joined in it, but it was not—your name was not mentioned specifically in that particular order of the Commission, was it?

A. Well, we requested it be filed by Mr. Hewett. It was filed for us, and for two or three other carriers.

Q. Those who were otherwise circumstanced, they did not definitely, specifically, point you out as the beneficiary of this particular permission?

A. Oh, yes, we outlined just how the thing was going to be published, and what was going to be put in there.

Judge Holmes: Go ahead.

* * * *

Cross Examination by Mr. Brooks:

Q. Mr. McDonald, at the present time, all of your routes that you have involved, there are independent common carriers, not affiliated with railroads, serving all the points, isn't that true, that you serve with your transport company?

A. I don't quite get that question?

Q. I say, all the points that you now serve with your transport company, there are also competing independent common carriers, not affiliated with a railroad, rendering service into the same points, isn't that correct?

A. Yes, sir, that is correct.

Q. And that was true at the time that you acquired

139 your various certificates, wasn't it, sir?

A. That is correct.

Q. Now, I wanted to get to your statement about the profits. As a practical matter, the profits that the transport company makes on its operations is determined exclusively by the contract between the transport company and the railroad, isn't that correct, sir?

A. Well, it is determined by that, partly; also, by the amount of tonnage we get in our official operation, the way we conduct our operation.

Q. Yes, sir, but the revenue that you, a large part of your revenue comes from the transporting of tonnage for the railroad doesn't it, sir?

A. Well, a part of it does.

Q. Yes, sir?

A. Not the largest part.

Q. And you have a contract that provides so much compensation to you for handling that tonnage, is that correct?

A. Yes, sir, we do.

Q. Likewise, in the transportation of your own tonnage, you utilize the services of the railroad in many instances, isn't that correct?

A. That is correct?

Q. And your contract covers what you will pay to the railroad for that service?

140 A. That is correct.

Q. In the handling of your business, you utilize some of their stations and some of their employees, is that correct?

A. Yes, sir, we do.

Q. And your contract covers what you pay for those, isn't that correct?

A. It covers all those things.

Q. And in the final result it provides that your contract provides that such profit as you do make, or a certain portion of it, automatically goes to the railroad, doesn't it?

A. Well, I believe it does, yes, sir.

Q. So, by rearranging your contract between your transport company and your railroad at any minute, you could either make it operate at a profit or a loss, couldn't you?

A. Well, if we did that, why, certainly, one or the other would be operating at—would have to assume that amount.

Q. All right, sir. Now, you gave some figures as to your intrastate revenue, a figure of a million-some-odd dollars?

A. Yes, sir.

Q. That revenue that you gave was your intrastate revenue, or intrastate routes, regardless of whether they paralleled your purchase certificates, or your other certificates, is that correct?

A. That is right. In other words, we are not restricted on intrastate traffic, and that is our revenue for all

141 of our intrastate operations.

Q. Now, with the exception of your purchase certificates, the order of the Commission involved here, would not impose any further restrictions that would be materially detrimental to you on your other routes, would it?

A. Yes, sir, it would.

Q. Which conditions do you have in mind?

A. Well, I have the key point restrictions in mind, it would very definitely hurt us.

Q. Now, aren't those key point restrictions on purchase certificates?

A. No, sir, they have put key point restrictions in practically all the certificates, both the purchased and the others, that were not purchased.

Q. All right, now, you mentioned a statement to this effect, that either all of your interstate traffic either originated, terminated—originated or terminated or moved over your purchased routes, as I understood you, is that correct, sir?

A. Yes, sir, I did.

Q. Did you mean to imply that that traffic that moves over those routes moves over it in truck service?

A. Not necessarily, the physical handling.

Q. The actual physical handling of the traffic that moves over those routes is largely in rail cars, isn't it?

142 A. I wouldn't say largely, it is in both; in other words, the T & P Motor Transport Company has a right to either physically truck it in its own trucks over the highway, or else substitute the rail service of the railway, and that is by tariff publication; the Commission permitted it to do that. We both truck that traffic and move it over the rail as well, we do both things.

Q. On that particular point, sir, with the exception of the key point restrictions that have been put in by this order, the order of the Commission would not materially change the actual physical handling of the properties that you have transported in the past, isn't that correct, sir?

A. Yes, it would change the physical handling, yes, sir.

Q. Can you tell me one instance, other than where the key point restriction is involved, that this order would change your actual physical handling of the traffic?

A. Over other than the key point restriction?

Q. Other than the key point restriction?

A. That is the only physical handling restriction in the certificate, is the key point restriction.

Q. So, that is the only—

A. That would change our physical handling, the key point restriction.

Q. And that is the only one that would do so?

A. I believe so, physical handling.

Q. All right, you mentioned?

143 A. Except, of course, the T & P Motor Transport Company would be unable to physically issue a bill of lading in its own name, or revenue in its own name.

Q. I understand that, sir, but I am talking about the actual movement of the traffic. Now, you mentioned some

carriers that you stated had no restrictions in their certificates, rail owned subsidiaries?

A. Yes, sir.

Q. Two of the largest rail subsidiaries that operate in the State of Texas are the Missouri Pacific Transport Company and the Southern Pacific Transport, isn't that correct, sir?

A. Well, they are pretty large ones.

Q. Both of those carriers have restrictions in their certificates similar to what the Commission has attempted to impose on your own, isn't that correct?

A. Well, I don't know whether they are similar, they have some restrictions, they never have engaged in iterstate motor carrier business, in all thing like we have for about thirteen or fourteen years.

Q. And do you know whether or not those carriers have operated at a profit, or not?

A. No, sir, I don't.

Mr. Brooks: That is all, thank you.

Mr. Suggs: If the Court please, may I ask a few questions on re-direct? My colleague isn't here in the room.

144 Judge Holmes: All right; go ahead.

Re-direct examination by Mr. Suggs:

Q. Mr. McDonald, counsel asked you if by rearrangement of the contract between—

Judge Holmes: I will say this, from now on each side is limited to one man to do the examination and cross examination.

Mr. Brooks: I agree.

Judge Holmes: Because, if we have too many lawyers on each side, and each fellow has his own views—

Mr. Suggs: If the Court would prefer, I would be glad to go get my colleague.

Judge Holmes: I guess there would be no objection to going on at this time.

Mr. Suggs: I will make it very brief.

Judge Holmes: All right.

Q. (By Mr. Suggs) Counsel asked you if by rearrangement of the contract between the T & P Motor Transport Company and the T & P Railway you could reflect such profit as you chose. Can you, by any arrangement of that contract, replace lost tonnage and lost revenue?

A. No, sir, we cannot.

Q. Counsel asked you about physical handling,
145 whether that would be changed by the conditions; the Commission has attempted to impose on these certificates; it would certainly give you less tonnage to handle?

A. Oh, definitely, yes.

Mr. Suggs: That is all.

Judge Holmes: Any further questions? Stand aside.

Mr. Lancaster: We rest.

Judge Holmes: Any testimony from the other side?

Mr. Underwood: Not from the Commission.

Mr. McFarland: None for the government.

Judge Holmes: How much time do you want to argue the case?

Mr. Suggs: If your Honors please, if the Court will spare it, we would like to have about a couple of hours. It is a long case; we have refrained from trying to point out items in this record as we went along. We are, in line with your Honors' suggestion, we rely on our argument to call the Court's attention to specific portions of the record which we think the Court would like to take notice of.

Judge Holmes: We will give you one hour and a quarter to the side.

Mr. Suggs: All right.

Mr. McFarland: If your Honors please, we have some intervening parties in behalf of the Commission's order here, we would like to have at least an hour and a
146 half for the Defendants and the intervenors, if possible.

Judge Holmes: The intervenors will have to align themselves with the respective sides that they are on, and utilize that time as they see fit.

Mr. McFarland: That is what I am asking for, at least that much time if we are to give them the time they would like to have, at least a minimum of fifteen minutes each. We would like to have more than that, but as a minimum.

Judge Holmes: An hour and a half to the side then, that gives the Claimants, or the transport company, and the United States and Interstate Commerce Commission an hour; allow the intervenors twenty minutes to the side.

We have had the briefs in this case. I think you make a better argument if you don't have so much time. In other words, you can come down to the points of the case, I am sure, but I will allow the railroad, the transport company, and the United States and Interstate Commerce Commission an hour each, and the other side, the intervenors, twenty minutes.

Mr. Suggs: I am sorry, your Honor, I did not catch that?

Judge Holmes: Twenty minutes for the intervenor, and an hour to each side.

Mr. Suggs: An hour for each side?

Judge Dawkins: One hour and twenty minutes to either side, for everybody.

147 Mr. Suggs: Of course, we don't have any intervenors on our side. Do we have forty-five minutes to reply?

Judge Holmes: You can use in excess of an hour, if you get to it. All you have to do is argue the case, and you can argue it in an hour, I am sure.

Mr. Suggs: Does the Court wish argument now?

Judge Holmes: Yes, unless you want to take a recess? I will start you off now then, that is, the transport company.

* * *

Argument of Mr. Suggs

Mr. Suggs: If the Court please, at the outset, we would like to emphasize the fact that we are not here seeking to review the administrative discretion, nor the legitimate exercise of judgment by the Interstate Commerce Commission. Our challenge is to the statutory lawfulness of this order which is here before the Court, and the constitutional lawfulness of that order.

Our case, as the Court will have perceived from the briefs of the parties, depends in a large measure, on the meaning of a seven word phrase, "auxiliary to, or supplemental of rail service." And, our case logically falls into a major division between purchased certificates and those certificates issued to the transport company under Section 207 of the Act.

We call the Court's attention to the fact that originally the three purchased certificates designated as sub-
148 numbers 5, 6, and 8, did not contain any condition whatsoever, except that the service which was to be rendered under those certificates, should be limited to points on the line of the railroad.

Now, that was the only condition that attached to those particular certificates.

The certificates conferred on this carrier grandfather rights under Section 206 of the Transportation Act, and we will demonstrate that to the Court, in spite of the assertion in Defendants' brief to the contrary.

In 1948, by its January 22nd order, for the first time the Commission undertakes to impose on those three particular certificates the auxiliary to or supplemental of condition.

The Commission asserts that it has the right to do that, because when it issued those purchased certificates, it reserved to itself the power later to impose such conditions as it saw fit, to make the service of the carrier auxiliary to or supplemental of train service.

There is ample authority, which we have submitted to your Honors, to establish that the Commission does not have the power under the statutes creating it, and the statutes governing its operation, to reserve to itself the right later to impose on a common carrier certificate conditions which would in effect revoke that certificate.

We would like to demonstrate—

Judge DAWKINS: You are referring to the pur-
149 chased certificates?

Mr. SUGGS: Yes, I am addressing my remarks now to just three of the certificates, if your Honor please.

We would like to demonstrate how the imposition of this condition on those three certificates most effectively partially revokes authority originally granted by the certificates.

I think it will be undisputed that under those certificates, when they came out to us, after we had bought them from predecessor motor carrier operators, that we have these rights:

We have the right to solicit business from, and serve the public generally.

We have the right to make our own contracts of carriage, that is to say, issue our own bills of lading.

We have the right to publish and participate in common carrier motor carrier rates under the provisions of Section 217 of the Act.

Judge DAWKINS: Did the Commission attempt to impose upon you, at the purchase of those purchased certificates, these restrictions?

Mr. SUGGS: No, sir, they did not, if your Honor please, they attempted to reserve the right to revoke those conditions later, if they saw fit. They did not impose them in the first instance.

Getting on with the rights which we unquestion-
150 ably had, for many years, under the purchased certificates, we had the right and the duty of establishing through routes under joint rates with other common carrier motor carriers under the provisions of Section 216 of the Act.

In the case of sub-number 5, that was the certificate which this carrier purchased from the Fort Worth Storage and

Warehouse Company, the carrier also had the right under the terms of the certificate to haul traffic from Dallas to Abilene, Texas, and from Abilene to Dallas, Texas.

Now then, the Commission now says, by reading a number of its orders, it never says so succinctly, but it does say so definitely ascertainably, that with the imposition of this condition, that the service under these three certificates shall be auxiliary to and supplemental of train service.

This carrier, under those purchased certificates, can no longer issue its own bills of lading.

It can no longer deal with the public generally as a common carrier motor carrier.

It can no longer publish or participate in motor carrier rates.

The Commission says that the traffic which the carrier moves, when it has that condition imposed on its certificates, must be rail traffic, moving on rail billing at rail rates.

Therefore, it seems to us to be beyond argument that the present imposition of that condition on those three
151 certificates most effectively revokes authority originally granted it by the Commission.

The Commission itself, in its decisions, which we have cited to your Honors, many times, has held that under the statutes it does not have the power to reserve to itself the right to impose conditions which will revoke a certificate.

Judge Dawkins: Do you think those conditions could be imposed on the purchase of a certificate?

Mr. Suggs: No, we do not, if your Honor please.

Judge Dawkins: You don't admit that?

Mr. Suggs: No, sir, we do not admit that that particular type of condition could be imposed in the first instance.

Judge Dawkins: All right.

Judge Holmes: That question would come up on other certificates?

Mr. Suggs: Yes, sir, it will.

The withdrawing of our authority to issue our own bills of lading, to employ motor carrier rates, and to interchange with other motor carriers, takes some study of our operations to see, perhaps, but there is one element of revocation here that is so clearly visible. In the certificate from Dallas to Abilene, as I remarked before, we had the right to haul from Dallas to Abilene, and from Abilene to Dallas, over a designated route, with the imposition of condition number 3, that is, the key point condition.

152 This is another phase in which there has been a revocation of our certificates.

We are forbidden to haul between Dallas and Abilene.

We are forbidden to haul to, from or through more than one of those points.

So, whereas we could originally take a shipment in Dallas and haul it to Abilene, if this condition 3 stands in the Commission's present order, we can only haul to some indeterminate point short of Abilene, westbound, and in the opposite direction, commencing at Abilene, we must stop at some point short of Fort Worth, Texas. So that our termini have been changed and restricted by the Commission's 1948 order.

As I started to say, the Commission itself has held many times that it cannot, under the authority of Section 208 of the Act, reserve to itself the right to impose conditions which revoke authority originally granted by the motor carrier certificate, and the Commission has pointed out that that can be done only under Section 212 of the Act, and the Supreme Court of the United States, quite recently, in the Seatrain case, has specifically pronounced that law.

There is still another reason why, there is another fundamental reason that the Court may recall from our briefs, why the Commission cannot now come along and impose conditions of this sort on these particular certificates.

153 That is, that it has been held many times by the Commission, and at least several times by the courts, including the Supreme Court of the United States, that the nature of a common carrier certificate issued by the Interstate Commerce Commission is as a final judgment.

Thereafter, that proceeding is not to be reopened, and that certificate is not to be tampered with, and the rights it confers, except on the petition of the holder of the certificate or on a charge brought against the carrier under Section 212 of the Act.

For those reasons, we say that the Commission's answer, that it can impose condition one and condition three on these purchase certificates now, because it reserved the power to impose those conditions, we say that answer is insufficient, because the Commission very definitely does not have that sort of power.

Now, the Commission, in its brief treats that point rather cavalierly. Time and again, in its more recent decisions, it has said, unquestionably we have the right to reserve this power, or it cannot be doubted we have the right to reserve this power, or words of similar effect.

We say to your Honors that is the sheerest sort of *ipso dicti* law. There is never any authority cited in support of the Commission's right to reserve that power, and the Com-

mission itself, and the courts have pointed out that
154 the power the Commission may reserve with respect to these conditions is quite limited, once a certificate has issued.

Adverting now to the Section 207 certificates, those are the certificates issued to this carrier on its initial application, all of the certificates in that classification, on their original issuance, carried the much discussed permission number one. The service was to be limited to that which was auxiliary to or supplemental of rail service.

Our position with respect to those certificates is simply this:

Auxiliary to or supplemental of rail service, at the time those words were used, beginning in 1938, in this petitioner's case, meant one thing, and, beginning in 1943, the Commission, inspired perhaps, by its own economic theories, changed its idea or how it was going to regulate these carriers, and changed the meaning of those words.

Apparently the Commission recognized some rather severe legal obstacles, to going in and changing the condition itself.

Therefore, they took refuge in the device of saying, well now, in the first instance, we used the words, auxiliary to or supplemental of rail service. Now, then, by those words, we always meant thus and so. By those words we always meant that a carrier holding a certificate so limited, must ship on railroad bills of lading, must ship only traffic for
155 the railroads, must not employ common carrier motor carrier rates, must not interchange with other motor carrier common carriers. We always meant that, the Commission says, since we first used those words in the year 1936 in the Barker case.

Now, if your Honors please, our position on that assertion by the Commission, is a little blunt. We just say they did not mean it. We dispute the accuracy of the statement.

As a matter of fact, as a question of fact, whether or not the Commission had any such intention, when it first used those words, as it now professes to have had. There is no question about what the Commission means now by the words. That is abundantly clear.

What we present to your Honors for decision is whether the Commission had that same meaning in 1936, and the next ensuing six years that it claims it had.

We want to undertake to demonstrate to the Court that the Commission has, in fact, changed its mind, and has, as a point of fact, changed its interpretation of those words,

by calling your Honors' attention to a series of pronoucements by the Interstate Commerce Commission, with respect to those words, and we present the items in a chronological order relating primarily to, of course, the certificates in this case.

However, we go one step further back than this case.

We introduced in evidence, for your Honors' consideration, the decision in the original Barker case, when the Commission first used the words auxiliary to or supplemental of rail service. And, the Court can read that decision, and determine for itself whether that decision or its next ensuing and following up decision in 1937, carries any implication whatever that those words preclude a carrier from utilizing its own bills of lading, from utilizing motor carrier rates, or from interchanging with other carriers, other motor carriers, or precludes a carrier from dealing with the public generally as an independent motor carrier.

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As of 1936, when the Barker case was written, auxiliary to and supplemental of meant two things. It meant substituted service for the parent railroad. It meant also independent motor carrier service, so long as that motor carrier service was tied down to stations on the line of the parent railroad.

Originally, those words meant that, and only that. They envisioned two characteristics of service blended into one which was properly called coordinated service with the railroad. But, it definitely did contemplate an independent truck operation by the motor carrier so long as it stayed on the line of railroad physically in its operations.

In 1937, the Commission handed down its first report in this case before the court, and it considered on a consolidated docket, this petitioner's application to purchase certificates of other motor carriers, covering routes from Dallas to Abilene, and from Abilene to Big Spring. In this record, those cases are designated as sub-numbers 5 and 6.

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In 1937, the Commission wrote a report on that application. This is what it said we would get, if they let us buy those two certificates. Applicant would acquire continuous operating rights between Dallas and Big Spring, if the applications are approved. That was the Commissions's concept of our operating rights, if we were permitted to buy those certificates in the reports is used the words auxiliary to or supplemental of our rail service.

But then, those words would not preclude our continuous operation from Dallas to Big Spring under those certificates.

The Commission, in its brief, now says we did not get any grandfather's rights under those certificates. But, in the order, the first order entered by the Commission, approving the purchase and ordering a certificate issued to us on a transfer, an order of March 15, 1938, the Commission made this recital:

"It appearing that applicant, in accordance with the requirements of Section 206 of the Motor Carrier Act, that is, the Grandfather Act Section, made application for a certificate as a common carrier, and that the said applicant or predecessor in interest, was in *bona fide* operation in such manner on June 1, 1935, and has so operated since that time, and the Commission so finding, therefore, it is ordered that upon full compliance with the requirements of Section
215, relating to insurance, 216, which specifically pro-
158 vides for through routes and joint rates with other
motor carriers; 217, providing for motor carrier tariffs, upon compliance with those sections of the Act, a Certificate of Public Convenience and Necessity shall be issued."

The Commission affirmatively and unequivocally found in the orders authorizing these certificates in the first instance that we were entitled to grandfather's rights, that the predicate was sufficient to grant us a certificate under that section of the Act.

Now then, that was in March of 1938. In June of that same year, the Commission considered the case where we sought to buy the certificate involved in the sub-8, that is two segments of line from here to Wills Point, and from Gladewater on to Shreveport. The Commission wrote some, in June of 1938, in connection with that application.

The Commission then said:

"Southern, that was our vendor, operates pursuant to a pending grandfather application as a motor vehicle common carrier of property between Dallas and Shreveport, Louisiana, via Tyler, generally paralleling the railway. In the instant transaction, applicant proposes to acquire the operating rights of Southern over the previously mentioned portions of the latter line. The operating rights referred to were grandfather rights, as a motor carrier common carrier unrestricted."

In December of that same year, on December 2,
159 1938, the Commission considered one of our earliest
applications for a Section 207 certificate. That was

one of our own applications for a certificate, not buying one, and the question was up, what we were entitled to. We had outlined what our operations were going to be, what they had been before the passage of the Act, in some instances, although we are not claiming grandfather rights on this certificate, but, we made our showing to the Commission, and in December, 1938, this is what the Commission said about this transport company's operation:

"However, while applicant's operations are limited to transportation of merchandise from and to stations of the railway, that is condition one as it was then understood, its holding out to the public, at least in respect to the kind of service it offers, is as broad as that of the railway itself. It publishes tariffs, and may issue its own bills of lading."

That was in December, 1938, they said that was the authority we had under our certificates. "Although it may be regarded generally as an instrumentality of the railway furnishing the improved and supplementary service, we conclude that its status, under the Act, is that of a common carrier by motor vehicle."

In 1938 the Commission specifically, affirmatively said we might issue our own bills of lading.

In March, 1939, coming on down the line chrono-
160 logically, the Commission again considered what sort of an operation we had, and what we could do.

We had applied for another certificate, and we had an alternate prayer there. We said, here are our operations, here are our railroad affiliations with the T & P Railroad and its subsidiary railroad liens. If this affiliation with this railroad cuts us down to a status of a mere contract carrier under this Act, in that event, we pray for the issuance to us of the lesser authority evidenced by a permit, a contract permit, rather than a common carrier certificate. But, here is what the Commission said on that:

"The applicant asks that its application be granted as one for permit, rather than for certificate, if it be found it is a contract carrier by reason of its relation with the railroad, shipments handled by applicant move under rates published in common carrier tariff to which it is a party, and we conclude it is a common carrier, and the certificate is the form of authority required."

That is what the Commission said in June, 1939.

Now, in that same year, and about contemporaneous with that decision—I don't want to argue evidence that the Court may have ruled out, and I will try not to, at this point, but the record here in the general proceedings, in the transcript

of evidence introduced before an Examiner of the Interstate Commerce Commission, indicates that Commis-
161 sioner Eastman, Chairman of Division 5 of the Commission which had passed on practically all of this carrier's applications for purchase or issuance of certificates, had been addressed by this applicant. His reply stating that interchange with other common carrier motor carriers, and similar matters, appears in the record here before your Honors, in a transcript of evidence taken before an ICC Examiner.

There is a companion case, as the Court may know, to this case, pending in Chicago, against the Rock Island Railroad, the Court no doubt is familiar with the Rock Island case from the briefs of the parties, and it was our pleasure to hear counsel, who is with us today, and part of counsel who is with us today, present that case, and the briefs filed in that case describe Commissioner Eastman is the ultimate authority on the Transportation Act, the man who knew it better than anybody else.

The public records cited in our brief disclose that Commissioner Eastman was the author of the Transportation Act in large measure, as Federal Coordinator of Transportation he has presented a draft, most of which was passed by Congress without change. He testified about it. I shan't rehash in argument a matter which we have presented to your Honors on brief, but Commissioner Eastman certainly is held up as the ultimate authority in these matters, and
he gives his interpretation in this record of our oper-
162 ating rights, and there is certainly no indication that we are to be deprived by the words auxiliary to or supplemental of any of the rights we had as a common carrier motor carrier.

Now, the Court will bear in mind some further points in this record, in these years beginning in 1938, coming forward—

Judge Holmes: Before you do that, what was Commissioner Eastman's testimony in substance?

Mr. Suggs: We asked him a specific question, whether we could interchange with other motor carrier common carriers, just like any other independent common carrier motor carrier, Judge, we thought we would do it, in all candor, and in the light of some of the things we said earlier, we thought we ought to put it up to the Commission, and tell them exactly what we were going to do, so we addressed him, and not individually, though he replied individually, he was addressed officially. He wrote back and said in substance, that is all right, what you propose to do.

It is obvious we kept this Commission meticulously informed at every step of proceedings, precisely what we were doing. The Commission had a rule with respect to these purchased certificates, a general rule, that the buyer of one of these certificates had to adopt the rates of the vendor, if the sale was approved. We complied with that rule. We filed with the Commission notices, which have been introduced here before the Court, announcing
163 we had adopted the rates of our vendors in those purchased certificate cases. Our vendors were common carrier motor carriers. The rates adopted were common carrier motor carrier rates, not rail rates.

We filed tariff after tariff. The Court has heard the detail on it and has an abstract on it in the brief, all those were filed with the Commission. The Commission was fully advised of the nature and character of our operations, and our interpretation, our idea of what we were authorized to do under those certificates, even the ones that contained the condition limiting the service to that which was auxiliary to or supplemental of rail service.

Nobody dreamed at that time those words meant any of the things the Commission now says they mean.

The Commission says, oh, yes, we did, if you read the Barker case sufficiently carefully, and sufficiently intelligently, you could have drawn from the wording in that case some of our intentions which we now pronounce with some degree of clarity.

That is what they tell us now, but in July of 1941, the Commission itself considered the Barker case, in passing on one of the certificates of a carrier about which there has been testimony here this morning, the Southwestern Transportation Company, owned by the Cotton Belt Railroad. It proposed to buy a motor carrier certificate after the fashion we bought a motor carrier certificate.

164 Now, here is what the Commission, in 1941, said about the service that was proposed. Here is what the Commission said that the railroad owned carrier was going to do.

"In this connection by arrangement between the applicant and the railroad, covered by tariffs on file with the Commission, if such shipments were tendered to the railroad, they could be moved on the railroad bill of lading and so called substituted truck service, conversely, under similar tariff arrangements, the railroad transports freight for the applicant, that is, the motor carrier, under the applicant's bills of lading, that is, the railroad's truck line's bills of lading."

The Commission, in 1941, in this case, went on to talk about the Barker case, and they said in the Barker case it was found that a proposed acquisition of control of a motor carrier operation by a railroad should be approved if it were established that the service to be rendered was auxiliary, or supplementary to train service of the railroad, to protect competing carriers, and for other reasons discussed, a condition was there imposed, prohibiting any service under the operations acquired at any point other than a station on the line of the controlling railroad. That is what auxiliary to or supplemental of meant in those years.

Now then, bear in mind the Commission has outlined what they are going to do, this truck line is going to issue
165 its own bills, and have the service performed by the railroad line.

Here is what the Commission says about that in '41:

"We believe this evidence shows that the proposed plan of operation would be auxiliary to and supplemental of train service." That is a decision by the Interstate Commerce Commission in 1941.

In that same year, 1941, the Commission did reach back on one of these purchase cases and attempt to impose five restrictive conditions.

This carrier protested at once that the conditions which the Commission then proposed to impose on these purchased certificates were at variance with the certificates originally issued. The Railroad Commission of Texas, this is shown in the record, wrote the Commission, and protested the imposition of those certificates on a carrier's authority, and in very short order the Commission entered another order which is in the record here, this was in the summer of '41, withdrawing the imposition of those conditions at that time, and one of the Commissioners wrote to the Texas Railroad Commission this way, and he said, "I have your letter of so-and-so, on July 28, 1941, the Commission entered a supplemental order to its proceedings prescribing certain restrictions to the operations. The applicant immediately submitted a petition to the Commission pointing out that the restrictions imposed in the supplemental order were at variance with those specified in the purchase
166 proceedings, and on August 13, 1941, a further supplemental order was entered vacating the order of July 28th referred to above, and imposing only the restrictions as specified in the finance proceedings."

In 1941 the Commission had not quite got around to changing this thing up.

The certificate contains the conditions, the purchase certificates contain only the conditions we have mentioned.

Then, in 1943, the Commission entered the order, which was the genesis of this lawsuit. There, for the first time, the Commission said these particular words auxiliary to or supplemental of, meant all the things the Commission now says they mean. They mean the carrier can't utilize its own bills, can't ship on its own rates, and so on.

Many of the commissioners, as our brief will show, have commented without contradiction, that that was the first time the Interstate Commerce Commission ever indicated that those were the burdens of the auxiliary to or supplemental of condition. They repeatedly admitted that there was no intimation of those restrictions in those words, except in so far as they can be found in the extended discussion in the Barker case, and we have introduced it in evidence for the Court to see whether the Commission is justified in making that contention.

In 1943, a little bit after the order entered in this
67 case, the Commission had not entirely changed pace, however, because they decided another motor carrier case, the Pacific Motor Company case, and in December, 1943, here is what they said about auxiliary to or supplemental of, as used in the Barker decision:

"The only definite restriction on the operating authority which was imposed in the Barker case and later cases, has been designed to confine the motor carrier operations acquired to the territory of the railroad, through limiting the rights so as to authorize service only at stations on the railroad, although at times the condition formerly was sometimes included in acquisition cases to the effect that service to be rendered auxiliary or supplemental of rail service, there has been no indication in the reports, the reports of the Commission, that such condition was intended to prohibit rendition of all motor carrier service directly for the shipping public under the operating rights in addition to, in substitution for, and in lieu of the parent railroad's service."

Your Honors please, there may be some light shed on that circumstance, where they said one thing in January, 1943, in our case, and what I just read to you in December, 1943 in the Pacific Motor case, the record discloses that only two commissioners participated in the report, it was
not an order, it was simply an interim report, of
168 January, 1943, in the T & P case.

Now then, briefs filed in here—well, I will not talk about the briefs. The Commission's order under attack,

which is presented to this Court for review, relies heavily on the Barker case, and what the Barker case meant by these words auxiliary to or supplemental of. That order was handed down on January 22, 1948.

On January 6, 1948, the same division of the Commission took up one more chapter in the Barker case itself. It said as background it would review the rights enjoyed by the railroad owned motor carrier under the original Barker certificate, granted, if your Honors will recall, in conjunction with the use of the words auxiliary to or supplemental of.

Now, in 1948, only last year, almost contemporaneous with the time when they were deciding this case, and saying those words meant back in '36 all the things they said they meant, here is what they said in another chapter, the latest chapter of the Barker case itself:

"Under this certificate applicant is limited to a service to and from and the interchange of traffic at points on the authorized route which are stations on the railroad. Under the Barker certificate, applicant performs two distinct types of service, one a substituted service for the railroad, and two, independent motor carrier service for the general public. The latter service involves the transportation of
169 general commodities in any quantity under motor carrier bills of lading and tariffs, and at motor carrier rates, and is the same service performed by the protestants."

The protestants there, as here, were common carrier motor carriers.

That indicates what, even in 1948, the Commission admits was embraced within the auxiliary or supplementary condition as it was originally used.

Your Honors please, we are constrained to rely on our brief only, without oral argument, in the time available, on the proposition that we have been deprived, we stand to be deprived of our property without compensation, in violation of the Fifth Amendment to the Constitution.

Passing now to the due process phase of that question. I would like to recite for your Honors' review a series of facts which brought about a hearing in 1944 in this case.

In 1940, by an instrument which was presented here this morning, I should say, prior to that, the Commission had taken the position that if a motor carrier desired to substitute rail service for motor service, such as this carrier does, it should publish a tariff directly. So, we said, how about doing it. The Commission said that is what we ought to do.

In 1940 we were accorded permission to publish such a director. We published it. Offered that service. Shortly thereafter, in the same year, in 1940, the Commission
170 entered an amendment to that order, which has been introduced in evidence, saying that all motor carriers holding certificates which had auxiliary to or supplemental of conditions in them, or which had a prior or subsequent rail haul provision in them, were not going to be permitted to further participate in that substituted service directly, unless the carrier came before the Commission and asked that its operating rights be defined.

Well, we started trying to get away from it, and the record will show that there were repeated extensions of the effective date of that order, and finally, the secretary of the Commission, Mr. Bartel, wrote us a letter, and said, in effect, now, gentlemen, this is all, you have had your last extension, if you don't come before this Commission with a petition by a certain date in 1941, I believe, you will have to get out of that directory.

We couldn't see how we could keep on operating if we didn't stay in that directory, in view of some of the conditions on us. So, we filed a petition, in compliance with that injunction to either do it or get out of the tariffs, and the first sentence of that petition reads this way:

"This petition is not voluntariiy filed."

Well, pursuant to that petition—I quoted the wrong date a while ago—that petition resulted in a hearing in 1942, culminating in the report of 1943, which for the first time was intimated that auxiliary to or supplemental of,
171 meant all the things the Commission now says it means.

We filed a petition for rehearing on that, in May of 1943.

On February 14, 1944, we began to get some of the due process. We want this Court to observe, on that date, by simultaneous orders, the Interstate Commerce Commission refused, denied our petition for rehearing, and in another order granted rehearing on our petition, and said the case would be set. That is what the record discloses.

That order, however, those orders affected only the Section 207 certificates. This 1943 report does not involve the purchased certificates. They had never been brought into further proceedings before the Commission.

In February, 1944, the Commission, on its own motion, without trying to ascribe the responsibility to this petitioner, reopened the purchase cases, and here is the notice we had on what was going to happen in that proceedings:

"It is ordered that said proceedings be, and they are hereby reopened for further hearing at a time and place to be hereafter fixed, solely to determine what, if any changes or modifications should be made in the conditions contained in the outstanding Certificates of Public Convenience and Necessity issued to the Texas & Pacific Motor Transport Company."

That is the notice that everybody got, that there was going to be a hearing on this case, and a hearing was
172 ultimately held here in Dallas on October 17, 1944.

Now, we will not argue due process further than to ask the Court to bear with us just long enough to hear a part of what happened at that hearing.

The Examiner opened the hearing by stating the substance of the notice I just read to the Court, counsel for this transport company said this to him, at the inception, in the beginning, Mr. Examiner, we desire to know at this time the purpose of the further hearing in this matter, and will specifically ask at this time if the Examiner could enlighten us as to that purpose.

The Examiner said, "Well, all I can tell you Mr. Reed, is what is set forth in the notice of the hearing, and it is our understanding, this proceeding arose out of a petition which was originally filed by the Texas and Pacific Motor Transport Company."

Incidentally, the record will show we tried desperately to redraw a petition for rehearing in this matter.

Then a report was issued, and after that report was issued, another petition was filed seeking further hearing, and following that, why, the proceedings were reopened for further hearing.

Counsel said, "Our petition just simply stated, this is counsel for the transport company, is that there are no changes desired, and we would like to know, if it is
173 possible to determine at this time, what changes it is the Commission has in its mind to be made in the certificates, and since we are in the position of being satisfied at the present time, we are a little bit at a loss to know how to proceed, or what information at this time to give to the Commission."

Your Honors may recall testimony here this morning, that in that interval, the parent company, the railway company, the parent railway had gotten special permission to set up tariffs to get into tariffs and set up an operation, and was getting by with it and it was trying to call this hearing off.

The Examiner's response to that, "As far as I know, the Commission has no idea as to what these conditions should be. I think that is a matter for the applicant, because it is primarily in the interest of the applicant, and the Commission, I am sure, has no fixed position in regard to these conditions, that is, no preconceived ideas what they should be, and it all depends on the circumstances."

The transport company, many times, reiterated it did not want any further hearings.

Then, counsel for the trucking companies took the floor and addressed the Examiner in this fashion:

"Mr. Examiner, before you start in on the testimony, may I make an inquiry as to the purpose of this testimony? It is my understanding, from statement of counsel representing the applicant, that is the transport company,
174 that they seek no change in their present operating authority, no modification or elimination of any of the restrictions, is that correct?"

Counsel for the transport company said, "That is correct."

Counsel for the truck lines goes on:

"Then the only purpose for the testimony would be to show the Commission how they are presently operating, and not for the purpose of making any changes or modifications in the restrictions that are now contained in the operating authority, is that correct?"

The Examiner interjected there, and he said, "The purpose of the testimony is to show what the T & P Motor Transport Company is doing now, and to find out whether any of the parties here object to it, and then, on that record, it will be up to the Commission to decide what to do about it. I have no idea about what they will do."

Counsel for the truck lines then addressed the Examiner, he said, "That is where I get lost in this proceedings. I understand the statement of counsel for the applicant they are seeking no change, that being true, the client I represent has no protest to offer. If you are opening this case on testimony with a view of changing or modifying or eliminating restrictions, that puts a different aspect on the hearing, the applicant having stated on the record they seek no modification, they want to withdraw their original
175 application, I don't understand the purpose and effect of the testimony that is now being adduced, unless the Commission has some suspicion they are operating unlawfully."

The Examiner's response, "The Commission had no suspicion of that, that they would have heard of it long before this, if anybody thought this transport company was operating unlawfully."

The counsel for the truck lines was persistent, he kept after the Examiner to tell him what it was all about. The Examiner finally told him this:

"There is no change contemplated in the certificates, in the routes, or the points between which they operate; there may be some change in the conditions, that depends on what is introduced here. As I see the issue, the matter is set for the purpose of seeing just what the transport company is doing now, they say they want to continue to operate as they are at present, and with that explanation, when they explain what they are doing, if that satisfies the parties, why, probably, that would be the end of it."

Now, I cannot quote directly any more, the time is passing.

Judge HOLMES: Let me ask you, what is your contention as to what the purpose—

Mr. SUGGS: Sir?

Judge HOLMES: What is your contention as to what was the purpose of that hearing?

176 Mr. SUGGS: At the time the hearing was going on, if your Honor please, we had no idea what purpose.

Judge HOLMES: You were reading that for some purpose?

Mr. SUGGS: To show the inadequacy of the notice we were given to satisfy the requirements of due process. We were given an ambiguous notice to come before the Commission for a hearing. We were not reasonably apprised of the charges that would be made or the issues that would be presented in that hearing, and on the basis of that hearing the Commission, and the record already before it, which could not involve any new evidence, except what came in in this hearing, the Commission undertakes to substantially modify our operating authority. That is the point we seek to make.

Judge HOLMES: You say that was the purpose of the hearing?

Mr. SUGGS: Yes, sir. The purpose of the hearing was to lay a predicate for ingrafting on our certificates the conditions that are set out in the Commission's order of January 22, 1948. It has developed now that was the purpose of this hearing. The notice we got did not give us fair

notice that anything of that sort was contemplated; and what we quoted from the language of our adversaries idicate that.

Passing right on logically into the question of whether or not this Commission's order is supported by any evidence whatever, I will recount to the Court what did
177 take place at that hearing, without reading any more, but it is all disclosed by the record.

The applicant had set up a device that was letting it get by, it had the railroad and truck tariffs on those portions of the route covered by the 207 certificates, where it had this auxiliary to or supplemental of condition.

The purchased certificates were unrestricted, and they covered a route substantially from Shreveport to Big Spring, Texas. They were wholly unrestricted, except being tied to the railroad, and this truck company could get by with that, so, it tried to put off this hearing, and the Examiner insisted some hearing be had, he said if the record satisfied the parties, if the evidence adduced satisfied the parties at that 1944 hearing, he didn't think any change would be made in the certificates of the truck company.

The truck company declined to offer a witness, or to offer any evidence. Then, one by one, all the way around the room, counsel for the independent truckers, counsel for the railway labor executives, counsel for the shipping interests of this area, represented by the Chambers of Commerce of Dallas and Fort Worth respectively, got up, and one at a time said, "We have no evidence to offer."

Then, the Examiner put one of this truck company's officers on the stand, he said, "Then, I will ask him some questions myself, I have got to have a hearing."
178 And, the Examiner did ask him some questions.

Now, that testimony is here in the record, and it does not add one thing to what was already amply before the Commission in detail. All the witness did was to relate what this transport company was doing, how it was carrying on its operations under its certificates.

At the conclusion of the Examiner's examination of the single witness, one by one all counsel for all the seven or eight or ten or perhaps more parties participating in that proceedings, moved to dismiss the proceedings. First the transport company led off, and then all its adversaries joined in its motion. That was overruled.

Then, we moved to strike the evidence, and our adversaries all joined us in that. The Commissioner said it was

an unusual case—I mean the Examiner said it was an unusual case, that he had never seen one like it before. But nevertheless, he went ahead, held a hearing, reported that testimony he himself had elicited, and we presumed that is the evidence on which the Commission undertakes to base its order before the Court to review, in so far as the Commission has evidence.

We submit to your Honors that the true situation here is that this January 22, 1948 order before your Honors, is not and does not purport to be supported by affirmative evidence showing a need for the imposition of these conditions on the certificates of this motor carrier. There is not
179 anything of that sort to support that order. The record just isn't here, as may bales of it, as we have.

What there is here, is an economic theory which apparently began to evolve in the minds of certain Interstate Commerce Commissioners in the latter part of the year 1942, and the year 1943, and which has since crystallized. It will be significant if your Honors will refer to our brief, to notice that the Commission ordered in the Seatrain case, which was struck down by the Supreme Court of the United States, was about contemporaneous with the Commission order in this case, that started all this shooting, that is, the 1943 order in the T & P case.

That is when the Commission began to get the idea that it was its duty from above to segregate these carriers into little compartments, and not let one get over into the other's field.

Now Congress didn't say that. The Act doesn't say that. That is not Congressional wisdom, that is Commission wisdom. The Commission has tried diligently to exercise it. That is all that supports this order, is an economic theory, and not one jot of substantial evidence. The Commission says it has vast years of experience, and vast knowledge of the carrier business. That it knows what is best for us. The only thing we say in response to that is that it may know what is best for us, but when what it knows conflicts with what Congress intended, its wisdom cannot pre-
180 vail over clear Congressional intent. This order is not supported by anything more than an economic theory of the Interstate Commerce Commission wholly lacking in evidentiary support.

If your Honors please, the Honorable Circuit Judge addressed some questions to us, while this case has been pending, and question number 4 seemed to us to be peculiarly

important, that is, the difference between the power of the Commission in the first interest to impose conditions on these certificates, and the power it later has under Section 208 to impose conditions once the certificate has issued.

We submit to your Honors that in the first instance, under Section 208, the Commission may lawfully impose conditions, so long as those conditions do not contravene the terms of the Act itself. Obviously, neither Section 208, or the much cited Transportation Policy of 1940, which your Honors will recognize as nothing more than a general statement of economic theory, neither of those sections can have the force of in effect nullifying sections, such as 216, 217, and the other specific provisions of the statute, 203, which specifically defines what a common carrier is in the first instance, the Commission is not at liberty under Section 208 to impose a condition which would contravene the statute.

Now then, after the certificate has issued, under the Commission's repeated decisions, and under several court decisions, topped by the Seatrain case, which is square-
181 ly on the point, after the certificate has issued, then under Section 208, the Commission is further limited. It may not then impose a condition inconsistent with the rights granted by that certificate, because the certificate has the status of a final judgment. If it is to be altered, in the substantial authority which it confers, Section 212 and Section 212 alone is the road open for the further modification of that certificate at that time.

We will conclude our arguments, if your Honors please.

Judge Holmes: Proceed with the argument for the Defendants.

I said, proceed with the arguments on behalf of the Defendants. You have an hour.

Mr. McFarland: I was wondering if you want us to proceed with the argument at this time?

Judge Holmes: Yes, if that is satisfactory to you.

Mr. McFarland: May it please the Court, I want to say in the beginning, in trying to—

Judge Holmes: I will conduct this argument on the idea that Judge Atwell adjourns for lunch at 1:00 o'clock, that is his schedule, and I will try to follow his schedule.

Mr. McFarland: I have 12:12.

Judge Holmes: That is right.

Mr. McFarland: Is that about right?

Judge Holmes: Yes.

182 *Argument of Mr. McFarland*

Mr. McFARLAND: May it please the Court, I want to say, in the beginning, that it is our position the government, who I have the honor to represent in this case, Mr. Underwood will represent the Commission, and these other gentlemen their respective intervenor clients.

We take the position that 212 has no place in this matter at all. Section 212 deals with the question of—of the suspension, change and revocation and transfer of certificates after they have been issued, and in the way that is there provided.

In this matter, it is our position that the applicable statutes, Sections 5, and 207 and 8, in this proceedings, clearly authorized the Commission to grant these certificates under such terms and conditions as will clearly define and permit an operation by these subsidiary owned corporations of the railroads, such as will not interfere with the national transportation policy and will be in the public interest and in accordance with the provisions of the statutes there clearly provided, and that these conditions—

Judge DAWKINS: Is that section quoted as a part of the petitioner's original brief, in the appendix anywhere?

Mr. McFARLAND: Yes, sir.

Judge DAWKINS: That section that you are now quoting now from—

Mr. McFARLAND: It is quoted in the government's
183 brief, your Honor.

Judge DAWKINS: I thought maybe, since it is printed, I think yours is mimeographed, it would be easier to read, if it was in this appendix to the petitioner's brief.

Mr. SIGGS: It is in there, if the Court please.

Mr. McFARLAND: You will find the Section 5, 2-B is printed beginning at pages 55 of the petitioner's memorandum-trial brief, on through to—

Judge DAWKINS: One particular section of that is the one you are now discussing?

Mr. McFARLAND: I am discussing the provisions as outlined in the proviso of Section 5, 2-B, on page 56. There it goes ahead and defines under 5, 2-B, Judge, where a transaction is proposed under said paragraph "A", the carrier, or carrier or person seeking authority shall present an application to the Commission, and thereon the Commission shall notify the government and so on, and over there, if the Commission should find, on page 56, that subject to such terms and conditions and such modifications as it shall find

to be just and reasonable, the proposed transaction, and is within the scope of sub-paragraph "A", and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications so found to be just and reasonable.

Then, in the case as here, where a railroad is at-
184 tempting to step over and take over a motor carrier, existing motor carrier operation, it has this further provision, which the Congress has enacted to protect their competitors, the independent motor carriers, in which they have made this provision:

"Provided, that if a carrier by railroad, subject to this part, or any person which is controlled by such carrier, or affiliated therewith within the meaning of paragraph 6, if an applicant, in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds, one, that the transaction proposed will be consistent with the public interest. Two, and will enable such carrier to use service by motor vehicle to public advantage in its operation; and, three, will not unduly restrain competition.

Now, the hearings in this case, and I respectfully—

Judge Holmes: Let me ask you this question: What do you hold the Commission has done in this case? Has it modified its certificate, or changed it by interpretation, what has it done in this case?

Mr. McFarland: All the Commission has done in this case, your Honor, as we see the record in this case, is that after it has been called to the Commission's attention that the transport company here is openly and flagrantly vio-
lating the law, and under the terms of the condition
185 as the Commission finds it is doing, why, they simply place these additional conditions and restrictions in the certificate to call to their attention that here we issue this certificate under the condition that you operate primarily, purely and simply an auxiliary and supplemental service to the rail service.

In one of the very first cases, to be exact, the third case that came before the Commission after the passage of the Motor Carrier Act of 1935, that is the famous Barker case, that so much has been said about by counsel.

When that case came before the Commission, we think clearly defined the rights, duties and authorities of the subsidiary railroad motor carrier operators, and what they could do and couldn't do under such a certificate.

They made it clear, as we see it, in that manner in which they called it to their attention, they were to operate their motor carrier as strictly an auxiliary and supplemental service.

For instance, in the Barker case, that has been so much mentioned here, the Commission—and in that case the Pennsylvania Railroad was wanting to operate an over-all common carrier motor carrier service, the same as T & P has been operating here, as they admit, through the years, and they wanted to continue to operate it.

Now, in that Barker case, the Commission had this matter before them, in which they were appealing to them to permit them to carry on a separate motor carrier, in-

186 dependent motor carrier operation, separate and apart from their auxiliary and supplemental service.

And, the Commission said no, you cannot do that, you have got to eliminate that, you have got to furnish the service auxiliary and supplemental to the rail service, and they made it clear in that case, and we set out and quoted those provisions that we think applicable, in our brief, in which they set up what they considered to be an approved service, and what they disapproved in the Barker case.

We attach in our brief more than one hundred of these motor carrier cases, in which the Commission, through the years, accepts that case, consistently and uniformly have held that it was not possible nor permissible, under the clear Congressional intent of the Congress to permit these subsidiary motor carrier operators of the railroads to carry on a service other than a supplementary and auxiliary service to the rail service.

Now, in the Barker case, going back there, that clearly defined the rights and issues, and with all due respect to counsel here, and the record, I think, will bear me out in this case, you take the record here of the cases he mentions here of the purchase cases that he is so much concerned about, and the conditions which were applied in those cases, under which the Commission conditioned those certificates with these two conditions:

187 You will find them on page 9 of the complaint. Applicant shall not serve or interchange traffic at any point not a station on the rail line of the railway.

And in the Barker case, to which the Commission has been—the complainant here has been before the Commission, as you will notice from their complaint, and in all the cases they filed some twenty-five or thirty different times, they know what that simple phrase meant.

Judge HOLMES: Let me get this, do you admit, or deny that the Commission has changed its interpretation of the meaning of the words auxiliary and supplemental? I just want to get your attitude? What is your position?

Mr. MCFARLAND: I don't admit that they have materially changed it. They might have changed it from their Commission in trying to permit what they term under special circumstances auxiliary and supplemental service, under certain circumstances and conditions, it may be a somewhat broader operating authority than they originally did, but I can't see where they have materially changed their position at all, other than the rail haul conditions, and by supplementing that to the key points.

Judge HOLMES: Let's keep it straight, do you deny they have changed their interpretation of the meaning of these words?

Mr. MCFARLAND: Well, frankly, I would say this
188 in that respect. Your Honor, there might have been some little change in their interpretation of that. But, if it is, it is not material, and if it is, it is clearly within the power and authority given the Commission under the statute to make the change to keep such operations well within the sphere of the operations as intended by the Congress in the enactment of the law.

Judge HOLMES: Now, they would not be permitted, I presume they would not be permitted to change a certificate by interpretation of the words in it, material change in it, they could not make under the name of change, they would not be permitted to make that by interpretation?

Mr. MCFARLAND: I don't think so, and I don't think they have done that in this case, and I want to say in that respect, I think the Seatrain case they have cited and referred to so repeatedly has no bearing on any issue involved in this case. It is under the water carrier section.

The Commission, in the Rock Island case, to which they have repeatedly referred, fully and clearly distinguishes and differentiates the Seatrain case, and shows it has no bearing on this proceedings under Section 2 of the Act.

For example, you take the Seatrain case, the statute is entirely different from the statute under 208.

Judge HOLMES: You claim these words have a geographic meaning. What do you claim is the meaning, what
189 sort of meaning do you say?

Mr. MCFARLAND: I think that is their wish, rather than the plain, simple facts that the record would show, I

don't think that the Commission has ever, by their unbroken line of decisions, have ever given it any such interpretation, or ever justified their believing that it gave any such interpretation.

Judge HOLMES: It has a geographic meaning?

Mr. MCFARLAND: That is right.

Judge HOLMES: What do you claim it does have, what meaning does it have, and what has it had all along?

Mr. MCFARLAND: Auxiliary and supplemental service?

Judge HOLMES: Yes.

Mr. MCFARLAND: Simply an over-all service that is to be rendered in lieu of the station to station or peddler car operations of the railroad to replace and to supplement that.

In other words, in strict conjunction, and in connection with the rail operation.

Judge HOLMES: That rule would have to have a real conception of termination in order to be auxiliary and supplemental, it would have to begin upon the railroad, a line upon the railroad? I just want to get your meaning of the words.

Mr. MCFARLAND: Well, I think under the conditions which have been defined through the years, and the conditions that were placed in the Barker case originally, and
190 in which they discussed the interchange, and the question of rates, and all those matters, and in those early decisions the Commission has rather, I think, clearly defined just exactly what they have meant through the auxiliary and supplemental service, and what could be done, and what couldn't be done. That is just—

Judge HOLMES: That is just what I want to get to, just what is that?

Mr. MCFARLAND: Let me—I have quoted that in our brief, your Honor, and I would like to, if I may, go back and—for example, here is the test on the question of operations in the Barker case. This is from the pages 11 and 12 of the Pennsylvania Truck Line case, 5 MCC, page 9, at 11 and 12, in laying down the test as to what kind and character of conditions that the Commission would approve, and that was the first case that came before them, and it has been uniform since then.

Judge HOLMES: That is not exactly the question. I am not trying to argue with you on this case, I am just trying to get the question, not what the Commission would do, or like to do, but what the Commission did do, that is, what

was the rule on the words auxiliary and supplemental in the certificates that they granted?

Mr. McFarland: Well, as I get it, your Honor, just briefly put, it is just this, it is a service that is permitted to supplement the peddler or wayfarer service in between

In other words, so as to expedite the freight that would

these small stations on the railroads, and to permit

191 the motor carrier to take the freight at the key point stations and to peddle it into the small stations.

be delivered to these smaller stations on the railroad line. And that was the testimony—I have numerous cases here that I could read to you, to show that is what, not only the Commission had in mind, but that is what the T & P had in mind when they applied for these purchase certificates, for these certificated rights, was to augment their rail service, to cut down their expenses, to give a quicker delivery service in between the smaller towns, and to supplement, instead of having a local freight train stopping in between all these small places that would take up a lot of their cars and equipment and time, that would have to be sandwiched in between their main line operation, they could supplement that by their motor carrier service, and render a much better, quicker, and a speedier service at less expense to the railroad, by having the motor carrier service to supplement their local freight train service between these small places.

Judge Dawkins: Are they primarily to take care of less than carload shipments?

Mr. McFarland: Is to take all of the LCL freight.

Judge Dawkins: Here might be an illustration of how that would work. You have a little station over here, "A", where a shipper would have a half a car, and another

192 station over here where "B", another shipper, might have half a car, and at your main station, to which the trucks would haul that freight, that freight would be concentrated, and a car filled?

Mr. McFarland: Right.

Judge Dawkins: Is that contention of how it would operate in the shipping?

Mr. McFarland: That is the way I understand.

Judge Dawkins: And on the delivery, you would get a carload of freight coming from some point of origin that was mixed as to consignees?

Mr. McFarland: That is right.

Judge Dawkins: And you would want to distribute that

in similar fashion to the smaller places, and to the consignees of less than carload lots?

Mr. McFarland: Yes, sir.

Judge Dawkins: Is that what your contention is?

Mr. McFarland: Yes, sir. Now, take this case right here before us, how it is spelled out in this case, and what the Commission had in mind, they placed the key points, and as I remember it, they say in Louisiana, in your state, Judge, at Alexandria, and I believe at Shreveport, and I believe Marshall, and Texarkana, Fort Worth, which includes Dallas, Fort Worth and Dallas is one key point stop, and then on to Abilene, and Pecos, Monahans and El Paso, and then the stations in between those different points would
193 be the stations covered by the auxiliary and supplemental motor carrier service, and the freight out of those points in between those points would be delivered where it was found to be expedient and more economical and efficient from the railroad's standpoint to deliver that mixed carload of freight between those key points in that manner.

Judge Holmes: That would have to be done at rail rates, I understand? That would have to be done at rail rates, I understand?

Mr. McFarland: Yes, sir. And that was the position that the T & P took before the Commission in asking for this authority, by saying it would be done that way.

Let me call that to your Honors' attention, read excerpts from the testimony.

Judge Holmes: I am willing to accept your statement on that. Let me ask you this question, and I will not further interrupt you. You say this order was not based on any evidence, but was based on theory, in lieu of evidence. I want to ask you if it was based on evidence, what was the evidence; if it was based on a theory, I would like to hear what the theory is?

Mr. McFarland: Well, I think in that respect, the testimony that counsel for the T & P gave, and he certainly was good in his testimony, I think he was even much better than his witness—

194 Judge Holmes: That was before the Commission?

Mr. McFarland: Yes, Judge Suggs here, he did quite a lot of testifying here in his argument. His testimony in that was that when he called—here is what he said, I copied it down as best I could, when he was testifying, as to what the Commission had as a basis for the evi-

dence before it on which they acted in this case, and among other things, he said here that they related in that case what the T & P was doing, and how they were doing it.

Well, if you need any more evidence than that to show that they were violating the law, and they were exceeding their certificated authority, in which they came into this Court, and admit all these specific things they are doing, which if all the other decisions of the Commission, practically without question, say they cannot do, it is clear to me that they are violating their certificated authority.

In other words, they are operating in excess of the authority granted. They are operating a service that is in excess of an auxiliary or supplementary service, as defined through the years by the Commission in these cases.

And, let me go back a little bit, he says there is no Congressional authority for that proposition.

To the contrary, we have cited in our brief copiously, from Chairman Eastman, who was a member of the legislative committee, and I believe at the particular time
195 this legislation was pending, was the Coordinator of the railroads.

We have quoted from his remarks before the House, and in regard to this particular legislation, of which he was, I believe he was the original author, and the position he takes in this matter.

You know, there is a very strong sentiment that was opposed to permitting the railroads to have any part or parcel in the operation of any kind of a motor carrier service.

Mr. Eastman took the position that for this LCL freight in between the stations, that the motor carrier, or an auxiliary or supplemental service of that kind could be very helpful to the railroads, and it was with that kind of testimony, shown before the Congress, on which the Congress wrote the proviso into the 5, 2-B that I have just read to your Honors, under which they conditioned—put those three conditions into the statute, and found where a railroad was trying to take over a prior motor carrier operation, that only where those conditions were met, could they under any circumstances be permitted to so operate. And, that was the intent Congress had in mind, and that is just simply and purely all there is to it as to what the Commission has done in this and every other case under which they have conditioned these certificates, to carry out the clear intent of Congress.

Judge Dawkins: As I understand the opposing counsel's argument, it is this, when they acquired these cer-

196 tificates, they acquired every right that the consignor had, that is, the assignor had, when he assigned those certificates to them.

Mr. McFarland: You are talking about the purchased certificates?

Judge Dawkins: That is what I got from their statement, that their rights are co-extensive with the provisions of those certificates that they got by assignment when the Commission allowed them to take over.

Mr. McFarland: Yes, but—

Judge Dawkins: Do they attack the right, as I understood it, of the Commission to say that it was done subject to their rights, that is, the Commission's right to subsequently modify them, they say they can't do that, and therefore have taken them over, that they acquired all the rights that their assignor had when they took them, practically unlimited.

Mr. McFarland: When these rights were taken, your Honor, first, here is where we strongly disagree with the position, and argument made by counsel for the railroad. The condition that was placed in these certificates at the time when they brought the matter before the Commission is as to whether or not they would permit them to operate, and take over these operations. The Commission placed these two conditions in there, in their certificates, which limited it strictly and primarily to an auxiliary and supplemental service. And based upon all the decisions—

197 Judge Dawkins: I may have misunderstood their contention on that score. The contention may be that you changed your interpretation, rather than—

Mr. McFarland: I don't think the Commission has changed it, I think it is the wishful thinking of the railroad, and hoping it, and most of the decisions that they cite in this case, while they refer to the Commission's decision as such, I respectfully call your Honors' attention—and, you take the late decision, for example, they read here of January 6th, '48, those are not Commission decisions. You will find in the Rock Island case, which is an excellent brief, and clear and distinguishing and differentiating opinion of each and all the questions that are raised here by the railroad in this case. They have distinguished those cases. Those are division cases, those are not Commission opinions. They never have, the Commission has never deviated and strayed off into the realm of—

Judge DAWKINS: What is the difference in legal effect?

Mr. MCFARLAND: The legal effect is, the difference between a trial court decision, and a Supreme Court decision. One is the law and the other isn't. So far as the Commission law is concerned.

In other words, it is eleven Commissioners' decision, as compared to three Commissioners' decision, and where they have cited, and have quoted from the dissenting
198 opinions of the Commissioners in these cases, it is three Commissioners who have consistently, rather consistently, have held along the lines of their wishful thinking. It is not the decision of the Commission, but it is a decision of a division of the Commission, which has never been the thinking of the Commission, and is not the thinking of the Commission now.

They have uniformly held, as they have held in this case, that this service must be auxiliary and supplemental service, as the Congress directs.

That is the position we take in this case, that is the whole thing in a nutshell.

These later conditions, in which they have tried, after some thirty or forty different times, after they kept coming back and back and back, and want more and more power an authority, they have just reconditioned these certificates to try to point out to them their error of their ways, and wherein and whereof and whereas they have been violating their certificates, to put them back on the track, but not with the idea in mind of exceeding in any way whatever the authorization of the authority that was given originally in the original conditions placed on their certificates.

Now, that is, as we see it, the record in this case.

Well, now, then, I just wanted to go back and review some of the questions that have been raised, that I haven't covered in this matter, and I think it can all be sum-
199 marized about like this.

Here in these original certificates, after full hearing, in which the transport company comes in, and if you will—I respectfully request your Honors to read the testimony of their principal witness, Mr. Hoffman, in which he repeatedly testified, and goes into these matters of just the kind and character of authority that they are seeking in these cases. I am talking about the purchase cases.

All right, we will just start out now with the case between of—of the service they are requesting, and these are

brief quotes, it will just give you an idea of the testimony as to the kind and character of a certificate they were wanting. This is Mr. Hoffman testifying, and this involves the acquisition of their operation between Monahans, Texas and Lovington, New Mexico, and between Shreveport and Cypress, Louisiana, transcript page 11 and 12. In both of these routes sought, they serve only the towns and localities of the Texas & Pacific system line, plan of operation proposed will be a tonnage between Abilene and Sweetwater, from distributing points such as Dallas and Fort Worth will be loaded in through cars, set off at Abilene in the early morning, and will then be loaded on trucks, and when the trucks arrive at Sweetwater will have unloaded the truck and so on, in general. In general, the saving of time in delivering and in transit, in transit on LCL
200 freight, to these intermediate points, truck operation as compared to local freight train service will be from one to twenty-four hours operations as compared to local freight train service, will be from one to twenty-four hours to Abilene, a saving of one to twelve hours, and concerning application MCF 108, that is the Fort Worth Warehouse and Storage case purchase, the main source of freight from Dallas and Fort Worth to the mail order house business, there is a demand for expeditious handling of LCL freight. This is Mr. Hoffman testifying in these cases. In handling tonnage from Dallas and Fort Worth, it is proposed to truck it over to Dallas and to combine with the tonnage at Fort Worth, which will put into a car operating from Dallas to Terrell, every truck thus operating will save almost two cars, thus twelve cars would be eliminated in the operation in East Texas. Later changed to number 8; from Dallas to Fort Worth, Texas, the saving would be ten cars, total savings on the operation would be twenty cars per day.

Now, in testifying on the Dallas to Wills Point acquisition, Mr. Hoffman said this:

This is Commissioner Terrell: "You propose to haul freight delivered to you by the T & P Railway Company?"

"Yes, sir."

"Do you propose to haul freight delivered to you by other connecting companies, I mean, truck lines?"

"No, sir."

201 "You won't receive any from any other truck lines?"

"No, sir, we won't receive any unless there is a demand and a necessity."

Now, here is Mr. Lancaster getting in, question:

"If the applicant institutes the truck operation he proposes under its application, and under the other applications filed, if as such truck operations it is ordered to interchange by any competent authority, it will do so?"

"Yes, sir."

Chairman Terrell, "Then your testimony is not like you first stated?"

Answer, "Yes, sir, my testimony was to this effect, that at the present time we do not anticipate any interchange with any other truck lines, but if the authorities demand we do so, we will interchange with other companies."

Mr. Lancaster, "Our position is just this. Just so far as we are engaged in truck operation, we are willing to establish any interchange that the public need or convenience may call for. At the present time we are not prepared, and we don't think it will be in the public interest for us to interchange freight between our rail operation and other truck lines, because that would involve an invasion of the territory of other established carriers, and at the present time I don't think that that is the desirable thing, and it is my understanding that the regular authorities in gen-
202 eral are of the same opinion."

And, we go on to further testimony of Mr. Hoffman, to this effect:

"Do you propose to do anything else, or to supplement, or rather, to take the place of peddler car service by your truck line?"

Answer, "That is the principal purpose of it."

Question, "That is what I am trying to get at, what, besides taking the place of peddler car service, does the truck line propose to do?"

Answer, "I can't think of anything else right at the minute; probably, we might handle express or United States mail but at this time I cannot think of anything else."

Question, "Principally peddler car service?"

Answer, "That is right, LCL freight to the smaller stations."

Q. And, that is the way it goes on through their testimony, and you will notice their application starts out by stating that they want to furnish a coordinated rail-truck service for their railroad, all the way through, in all of these proceedings, that is the idea they presented to the Commission, and their testimony through all these cases, are to

the same effect. They are not asking for a separate private motor carrier service to carry on and conduct an independent motor carrier service. And, they never have, and
203 they are coming in here now and asking for it, as I say, contrary to everything that has been presented to the Commission; contrary to everything the Commission has ever passed upon, or ever considered, or has ever had before them in each and all of these matters, and it has been the uniform practice of the Commission in these matters, as is well known, and as counsel well knows, that the Congress had clearly in mind, it was clearly the intent of the Congress to limit subsidiary motor transport service of these railroads to a strictly auxiliary or supplemental service. And, they have uniformly held that, where the full Commission has passed on these matters.

You have little division commissions that stray off occasionally, but where the Commission has passed on these matters, they have made it clear and concise, and kept their condition clear on that proposition.

I challenge counsel to cite a case to the contrary, and the Supreme Court has approved these conditions, in the Barker case and in the A. T. A. case, and we cite those cases in our brief, and they are clearly in point, they are on the very conditions we are talking about, we are not talking about water carrier rights, under entirely different sections of the Act, which have no application, and is entirely different, and can easily be distinguished from the case at bar.

That is our position, your Honors.

204 Judge Holmes: Intervenors have twenty minutes, and if they can make that fifteen, we can finish by 1:00 o'clock.

Mr. Suggs: If your Honors please, I had intended to save three minutes for the intervenors, if I could.

Mr. McFarland: I thought our intervenors were to have twenty minutes apiece, I apologize, I did not intend to take their time, your Honor, and also counsel for the Commission's time.

Judge Holmes: Oh, yes, you didn't take all your time.

Mr. McFarland: I would like to give whatever remaining part of my time to—

Judge Holmes: You had twenty-five minutes, you didn't say anything about arguing, so, I didn't urge you to argue, but you are certainly entitled to twenty-five minutes.

Mr. Underwood: I would like to be heard.

Judge Holmes: Go ahead, we will run up to 1:00 o'clock.

Argument of Mr. Underwood

Mr. UNDERWOOD: If your Honors please, first, I would like to answer, if I may, his Honor, Judge Holmes' question about territorial.

This provision or restriction of tieing it to a rail movement subsequent or before, in addition to the trucking, that territorial idea did not spring from the Commission. I think it sprang from those who were in the motor
205 carrier operations. And it apparently, and the theory of it is, as I understand it, that because the operations were to be along the line of the railway, at stations on the railway, that it was only a territorial restriction, rather than as to the kind of particular service.

Now, I don't want to emphasize too much, but it seems to me that it has been definitely established here by the argument of my learned associate that these applications which were presented to the Commission were all based upon the proposition that the operation which was desired to be authorized, was this auxiliary and supplemental.

Now, in addition to what counsel has read with respect—in the Southern Transportation Company, Mr. Hoffman is on the witness stand, as usual, he was the star witness in all these proceedings, and told about the benefits that would accrue, not only to the public, but to the railroads, and to the transportation company. In his testimony on the Southern Transportation Company purchase, and this is one of those 206 applications, that they seem to think they have the special right, but the thing that they asked for was this particular right, and now, they are complaining because something has been done which they don't like about it.

Do you propose to do anything, or rather, to supplement or rather to take the place of peddler car service?

That is the principal service.

206 That is what I was trying to get at.

Here is another question: Now, I understand you to say, Mr. Hoffman, that you are now rendering train service between Dallas and Wills Point. Do you propose to substitute that service with truck service if this application is approved?

Answer, No, sir, the train service will continue to operate.

Will the trains continue to operate as far as Mineola?

Answer, That is right.

But, at any rate, you will be substituting truck service for train service between Dallas and Wills Point?

Answer, Auxiliary service on merchandise, but the trains will continue to operate.

Now, I think perhaps there we have a definition, and it is given by the witness for the transport company and the T & P.

He says that this particular service is auxiliary service, and I don't think we could have any better evidence than that is what they meant, and what they were entitled to.

And, he does it in another place. He says in sub-one, he uses that same phrase. And the primary purpose of the transport company is to offer this supplementary service for the rail?

Yes, sir.

And not as a carrier generally by motor vehicle?

That is right, it is auxiliary service.

This is Mr. Hoffman. I tender him as a witness to the question of what is meant by auxiliary and supplementary service.

207

Now, they got what they asked for, and the thing with respect to their complaint, is this: They say that it is impossible now for the Commission to change the conditions. But, is it really a change? I don't think it is.

If you will examine those conditions as they were originally incorporated in the certificate, and then examine those which are proposed by the Commission, you will see that in substance they are to the same effect, and it is only a change generally in verbiage.

Judge Dawkins: My experience is we can have a concrete illustration on what is taking place, what is done, being done that the Commission objects to, and possibly the petitioner in this case wants to do. You can understand it better than you can where you have just general principles discussed.

Mr. Underwood: Yes, sir.

Judge Dawkins: Now, I imagine this record before the Commission gives plenty of illustrations on what is being done in a particular locality.

Mr. Underwood: Yes, sir, I think so.

Judge Dawkins: And the Commission objects too?

Mr. Underwood: Yes.

Judge Dawkins: And what the petitioner insists they are entitled to. Now, those concrete illustrations of what is going on stains deeply into my consciousness, than this abstract discussion of principles we have had here mostly.

208

Mr. Underwood: If your Honor will look at the testimony which was given by the same Mr. Hoffman on the hearing of October 14th—October 17, 1944, the one that they were

forced into, although they didn't want it, that is another matter I will treat on—you will find Mr. Hoffman tells what they do; I mean, what kind of service they are performing.

Now, while I am on that particular thing, I want to say about this evidence, about their being dragged into a hearing, but, if you will observe by the record, they were not dragged into this hearing.

What happened was this '43 proceedings, which was the report of the Commission, and that laid down some strictures, or conditions, upon these carriers, and said what kind of those, that were not conforming to these conditions, they might be in for trouble, but said, we won't make any order now, but we leave it to the carrier to conform their situation.

Then, these gentlemen came in and wanted reconsideration, rehearing, or a further hearing. That was the alternative thing. And so, the Commission denied the motion for reconsideration and did set it down for a further hearing, and that is the October 17th hearing.

Now, they were not going into it, but when they got down here, they say that they did not know what was the purpose of the hearing.

209 Now, if they just related that other thing that started all the things, they would have known very well what was expected to be done there, and that was to talk about these conditions, if they had any objections, and had anything to say about what the conditions ought to be, and things of that sort.

They can't say they were beguiled, or they can't say they were unapprized of the nature of the hearing and had no idea about it. The thing that started them on the backward track was that the railroad company had been authorized to put the motor carrier rates in.

You see the sequence of that. This special Commission which the witness, McDonald, talked about this morning, required motor carriers—forbid them, if they were doing this kind of supplementary business, they would not be allowed under the special permission, which they had used before, and by which they participated in the rates, they would not be able to use it any longer, because where they were subject to these restrictions.

Now, in the interim between that where the railroad company had applied to get in on this motor carrier rate, and had been authorized to do it, so the net result of instead of the motor carrier being in on the motor carrier rate, why, the railroad came in to take its place, it is all in the family, because I don't draw any distinction between the transport company and the railroad company.

210 Judge HOLMES: Let me ask you this question, before we adjourn, has there been any change in the policy of the Commission, in reference to this matter since 1946?

Mr. UNDERWOOD: No, no, I think not. There was one decision which they—I would say this, your Honor, and this may be the reason why there is some confusion. Now, he cites this last decision of 1948, that is the Barker case, as indicating a departure.

Judge HOLMES: Well now, I will let you continue that. We will take a recess until 2:30.

(NOON RECESS.)

Judge HOLMES: I figure that we have thirty-three more minutes, thirteen for the Defendant, and twenty for the intervenors, and you do have, Mr. Suggs, you have four minutes.

Mr. SUGGS: Four minutes, thank you, Judge.

Judge HOLMES: I had you marked two, but I will take your figures on it.

Mr. SUGGS: Thank you.

Judge HOLMES: Proceed with the argument.

Mr. UNDERWOOD: I was talking, at the time of the recess, about the decision which was referred to by Mr. Suggs, the recent decision in which it said of a carrier, that it was authorized, there were two operations authorized,

211 the regular motor carrier service, and the service restricted.

I took occasion to look into that matter, and here is what the certificates say, this group of routes, and at the foot of that says, "Operations authorized on limited service to and from and interchange of traffic at points on the authorized routes, which are stations of the Pennsylvania Railroad Company."

And then, it goes on with another set of routes. And, at the foot of that, it says, "There are specified the five conditions which are before this Court now."

So, I don't think that is probably as the case counsel thought it was, showing that there could be independent motor carrier service.

Of course, nobody takes the position, so far as tthe Commission is concerned, that the Commission could not, in a proper case, authorize general motor carrier service, but it did not do that, and the most that could be said of this is that assuming that, confining it to the points of authorized routes, which are stations of the Pennsylvania, that is a general motor carrier application, that it did say as to

that particular thing, the Commission thought it was proper to give them that authority, as well as the conditional authority on the second part of the granting part of the certificate.

Now, that goes to show that to make and give emphasis to a point that in these cases which are before your Honors,

212 there was no grant of authority, except with the conditions which were expressed, and that was limited to that kind of service, which is known, and which Mr. Hoffman talks about as auxiliary or supplemental service. He talked about that away back in 1937.

So, that is why I deemed it advisable to refer to his testimony on that point, to show that that is what the company thought it was, this auxiliary service was the kind of, you might call it, peddler car service, a substitute for peddler car service, and there is one particular item in his testimony in this purchase case involving the Southern Transportation, which is significant:

"Upon what are your rates for T & P Motor Transport Company based?"

"The rates we have filed are based upon the rail rates, our rates are the same as the railroad rates, and are fixed by the Texas Railroad Commission."

Now, another case, I won't take the time to cite, gives identically the same definition of the kind of service that the application is seeking, and says it is auxiliary service.

Now, in this case involving the Johnson, the purchase of the Johnson rights, and the Fort Worth Warehouse Storage rights, it will be noted that I have a pamphlet, copy of the decision, and I want to just read briefly from Commissioner Caskey's concurrence in it:

213 "I concur in the report, but believe that a brief statement of my reason for doing so is authority that purchase by the applicant of the railroad controlled motor carrier of the operating rights of certain independent motor carriers here authorized is made subject to conditions corresponding in all respects to those imposed in Pennsylvania Truck Lines Barber application. One of these conditions which is fundamental is that the carrier acquired operating rights will be only to provide service which is auxiliary or supplemental to train service of the controlling road. The illustrations of the operations which are auxiliary or supplemental to train service, given in the cited case, is that of substitution of the truck for peddler or way service, what is commonly called station to station service. These are operations such as are per-

formed by controlling railroads with a view of enabling it to achieve greater efficiency and economy in the conduct of its business as a railroad."

I may parenthetically say this kind of service is a railroad service, it is auxiliary and supplemental; as it was said at one time, when it was in its elementary stages, that there was objection to it, because it said these trucks were doing—the railroad was doing a different—was putting in a different kind of operation, and the Commission said, no, that is not so. What they are doing is putting in a more efficient service, for a less efficient service. So, it was
214 held not to be a new service.

Let me continue. Neither this report, nor the reports in the cited case, according to my understanding, contain any authority, express or implied, whereby applicant, independent of the railroads may use operating rights which it is permitted to acquire, to engage in motor carrier operations that compete either with the railroad itself, or, except in so called pick up and delivery service within the terminal area. As an established motor carrier.

The reason for imposing this condition is fully stated in the report of the cited case, and need not be cited here.

This is the certificate and identical, this is bit of the advice given by Commissioner Caskey which they had, if they had followed it, they probably would not have been in this case now.

Suffice it to say, if applicant deemed this and other proposed conditions too onerous, as pointed out in the first supplementary report of the cited case, it may refrain in the first instance from exercising the permissive authority here granted.

That is the substance that is, if they didn't like these things, these conditions, they owed the duty to the Commission to come back and say to the Commission promptly, when they were apprised of what their restrictions were, that they objected to it. But, they wait a long time,
215 and then finally bring this suit.

Judge DAWKINS: Was anything said at any place down the line, as this controversy has grown, about the inroads the trucks made upon the business of the railroads, that probably inspired through necessity—

Mr. UNDERWOOD: Yes, sir.

Judge DAWKINS: —the railroads tried to get into some type they could compete with?

Mr. UNDERWOOD: That is right, because I think that was developed by—

Judge DAWKINS: That is probably the underlying cause for all of it?

Mr. UNDERWOOD: Yes, I think it comes into a competitive, because they were losing business to the trucks on that less than carload stuff on the traffic.

Judge HOLMES: Let me ask you this, is there any statutory prohibition against the railroads doing that?

Mr. UNDERWOOD: No.

Judge HOLMES: No prohibition against the railroads doing that?

Mr. UNDERWOOD: No, because the Commission approved it, and the Barker case cited such, each of these conditions that were similar as the ones that are before your Honors, said that they determined them appropriate, and that it also took in particular—look at this condition for
216 reserving the right to impose in the future such further conditions as might be necessary to insure that the operation was truly an auxiliary and supplemental service.

And, they said that, introductory to that, they said, the Court said, to make sure that these rights that were granted in the proper case, they would not run over and into something that was not authorized. That is why apparently the Court said the Commission put in that reserve condition, of their reserving the right to make future restrictions which might—for the purpose of keeping the operations—that which was asked for, and that which was granted, and nothing more and nothing less.

Now, there was something said about this, I don't know whether—I wanted to say this, as your Honors know, that under the Commission's practice, and under the law, the Commission must find public convenience and necessity, in order to grant 207 applications that is the one that is not the grandfather. That is other than the grandfather, it has to find public convenience and necessity.

Now, in a number of these cases,—

Judge HOLMES: Your time is just about up.

Mr. UNDERWOOD: I just want to explain, in a number of cases, objection was raised to one of the conditions, this condition 3, which was the private rail condition, that they said they wanted to operate freely as a motor car-
217 rier, and the Commission said, in a number of these cases—I have gone through, not through all of them, there were only sixteen of them, a very large number, but all of them, responding to that, I have a number of them, the Commission said, there is nothing in the record before

us in this particular case, showing any evidence of public convenience and necessity for a broad common carrier, unrestricted operation.

Thank you.

Mr. HICKEY: May it please your Honors?

Judge HOLMES: The intervenors have twenty minutes to divide between you.

Mr. HICKEY: Yes, sir.

Argument by Mr. Hickey

Mr. HICKEY: Your Honors, Judge Holmes has raised a question, which we feel, the Railway Labor Executives' Association lies in the heart of this case, and pervades the thinking of the petitioner throughout the case.

Now, is there any prohibition in the statute about the railroad engaging in that sort of a business?

I don't know whether counsel for the Commission entirely understood the purpose of that question.

Judge HOLMES: I don't know whether he did, or not, because I asked him if he did.

218 Mr. HICKEY: Your Honor, as we explain in our motion to intervene, we were a party at interest before the Commission and the basic, I might say, almost exclusive reason why we intervened in this proceedings before this Court was because of the fact that in petitioner's brief they have taken the position that under the Interstate Commerce Act, the Commission does not possess the power to restrict a rail carrier, or a rail carrier's affiliate, entering the motor carrier field, on any other basis, than it would a motor carrier.

Now, the entire sense of our brief is devoted to that proposition. Page 25, the opening sentence is "The Commission proposes the restrictions here complained of only because the petitioner is railroad-controlled. Under the terms of the statutes that circumstance does not justify treatment of petitioner differently from other common carriers by motor vehicle."

Again, on page 27, they make the statement, "It is therefore clear"—after reviewing, we feel very sparingly, and not accurately, after certain legislative history, "It is, therefore, clear that Congress accepted the recommendations of the Interstate Commerce Commission and the Coordinator that railroads or their affiliates should be treated like anyone else in the issuance of certificates."

That is a pretty broad statement, and one which has not been argued here today. We entertain the hope that

219 thereby petitioner has abandoned argument. Nevertheless, it is in the brief.

I think it was an argument which was hardly anticipated by either the United States or the Commission, and for that reason, the Court will not extensive treatment of the proposition in the briefs filed by the Commission or the Department of Justice.

We have, however, filed a very careful brief on the subject, directed to that issue specifically.

We would like to point out, in answer to Judge Holmes' question, that in our opinion, there is a very definite prohibition in the Interstate Commerce Act, which requires the Commission to limit a rail carrier or a rail carrier's affiliate to definitely restrict the type of service in which that rail carrier, or affiliate, may engage, when it enters the motor carrier field.

That provision was, when enacted, Section 213 A 1 of the Motor Carrier Act, now Section 5, 2-B, as enacted in 1940 by the Congress.

Very briefly, that provision reads as follows, in discussing acquisition under Section 52, it provides though, which was referred to briefly by Mr. McFarland, "It provides, however, that if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated there-
220 with within the meaning of Section 5 (8) of part 1, the Commission shall not enter such an order unless it finds that the transaction proposed will promote public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

In other words, the Commission is under a statutory requirement to find three things, statutory findings every time a rail carrier and its affiliate seeks a motor carrier field, it must find that it will promote public interest. It has got to find it will promote it in its operation, in the railroad's operation, and it must find it won't unduly restrain competition.

Judge Dawkins: Did the Commission make any finding there was a restraint upon competition in putting into effect these restrictions?

Mr. Hickey: They did not, sir, but they did provide this, require compliance with one of the other requirements, namely—

Judge Holmes: What were those conditions?

Mr. Hickey: The conditions were, the issue in issue in this case, namely, the issue which are designed to insure

that the service of the rail carrier's affiliate will be auxiliary and supplementary to its rail operations.

Judge HOLMES: Do I understand the statute re-
221 quires a Certificate of Public Convenience, be specific about it?

Mr. HICKEY: Yes, sir, it does, your Honor, the Section 208 provides that the Commission shall designate the service to be rendered.

Judge HOLMES: Specifically?

Mr. HICKEY: Specifically.

Judge HOLMES: Now, are there any Certificates of Public Convenience, other than these supplemental and auxiliary?

Mr. HICKEY: Yes, as I understand it, the service to be rendered is designated in terms of certain conditions designed to restrict it to a service which will be purely auxiliary and supplementary.

Judge HOLMES: Does it give any geographic termini to routes other than those?

Mr. HICKEY: That is where the so-called key point doctrine comes into the picture, your Honor, because there the Commission, in order to insure that there be a compliance with the Congressional mandate in the statute is seeking to confine the rail carrier affiliate.

Judge HOLMES: Are there any other termini mentioned, any geographic points mentioned in these Certificates of Public Convenience, other than in those you refer to, where the auxiliary and supplemental—

Mr. HICKEY: Oh, yes, yes, the points between which the operations will be conducted are specified in the
222 certificates, but, in addition to that, there are certain restrictions on the way in which operations may be conducted between those termini.

Now, there is a long history of legislative debate, and many forms of transportation history of each one, which we have set forth in our brief before the Court, which we feel is fundamental to an understanding why this restriction was placed by the Commission in Section, what is now Section 5,2-B.

Furthermore, I believe it is very important for the Court to appreciate this fact, that the Commission operated under Section 213 A 1, which I just read, where for a number of years, from 1935 to 1940, during which time hundreds of cases were decided by the Commission doing just what is done in this case, with the exception of the key point doctrine, and where the Commission thereby firmly placed

before the Congress at the time the Transportation Act of 1940 was reenacted, it established administrative policy, and as your Honors are well aware, there are a number of Supreme Court decisions, as well as the Federal Courts, that state under those circumstances the reenactment of the statute in the same form must be deemed as an acquiescence to restrict the carrier.

So, this case comes down to the fundamental, that the Commission was under the duty and obligation to restrict this carrier to auxiliary and supplementary service. Very much like the Court, it did, in answer to another
223 question raised by Judge Holmes, it did vary in its implementation of that particular statutory standard. I think the correct answer to Judge Holmes' question is, yes, there has been a variation from time to time in the implementation given the standard.

The Commission, like the Court, sets out in a consent decree, we will say, under an anti-trust law, sets out a se of conditions, designed to insure a particular result.

If those conditions don't work, they set out some others.

Now, the mere fact the petitioner has violated the clear intent, gathered by the Commission from the legislative will, at the time the Act was written, does not give it any vested rights which the Commission is violating when it later comes along and puts in new conditions—

Judge HOLMES: Your time is up.

Mr. HICKEY: I think my time has expired. Thank you.

Argument by Mr. Brooks

Mr. BROOKS: May it please your Honors, I want to add just one or two matters there. As I understood Judge Holmes' question, he asked about a specific limitation as to geographic.

I picked up one of the certificates here just hurriedly. This is one of the purchase certificates, and it describes the routes where they are authorized to serve, and
224 it says between Dallas and Wills Point, from Dallas over U. S. Highway 80 to Wills Point and return over the same route.

All the rest, at any time there is a deviation from one highway to another, or an interchange, these certificates specifically set out what route should be operated.

Therefore, to me, the theory that the phrase that they must serve only points served by a railroad is geographic only, doesn't hold water, because it would be merely superfluous, or redundant, because the Commission in its certificate has already set out the points which can be served.

and if it only meant to locate them geographically, it would be just saying the same thing twice, in different kinds of language.

That is one point I wanted to answer on that.

At the same time, if I understood Judge Dawkins' question, earlier, I do understand the applicant here does contend when they purchase a certificate that the Commission has no right to put any limitations on it whatsoever. That is in the face of the statute which specifically provides that in a purchase the Commission must find, and so fix the purchase that it will be used in its operations, and is operation of a carrier by rail, as defined by Section 1 of the Act, is the transportation of persons or property by rail, and therefore they would have to put it into such a purchase the restriction that it be used to carry on that function of transportation of persons or property by rail, not by motor carrier.

I want to refer briefly to one fact that perhaps has not been made clear. This language which Judge Suggs says does not mean to the railroad anything other than the Commission was saying in effect, you have got to operate in a particular locality, does not appear in any certificates which are granted to motor carriers *per se*.

Now, that, in itself, to me indicates it has some meaning that the railroad should have known that when they got a provision of that sort in their certificate that they were not authorized to operate like an independent common carrier, because their certificates were not the same.

It is true they are a common carrier motor carrier certificate, if you want to call them, but there is no restriction in those issued to the regular route common carriers as such.

I want to pass on to one other thing, Judge Suggs emphasized that in discussing some of these things the Commission said they must comply with Section 216 of the Act, he emphasized that was the only section authorizing joint routes, with other motor carriers. He forgot to emphasize that it is the only section that authorizes joint routes with the railroads.

I won't take your time to read it, but when the Commission says you must in your rates, comply with 216, they were talking about a section that provides not only joint routes and through rates with other motor carriers, but specifically with railroads, and the T & P would need authority under Section 216 to have any joint routes and through rates with motor carriers.

I want to point out some of the particularly significant matters to me in this, and that was the admission by the witness McDonald that in spite of all the protestations that have been made here, that with the exception of the key point restrictions, that nothing that the Commission has done would in any way interfere with their actual physical handling of freight.

In other words, they can continue to handle it as they have handled it since 1929, 1931, or whatever date that you want to, with the exception of the key points, which prohibits them from loading a truckload of freight in New Orleans, and hauling it all the way to El Paso, Texas.

Now, on those particular points, the key point system, the decisions show that the applicants have recognized that the Commission can change key points from time to time.

Now, the very fact the decision in this case which will be produced in the appendix to their brief contains quite a bit of discussion about how the applicant wanted a change in the key points. They argue about a little town of Addis, down in Louisiana, quite extensively. On the one hand we have the applicant coming in here and saying the
227 order is sancrosanct, it cannot be changed after it is issued in any way. On the other hand, we have them appearing before the Commission and saying remove a key point. By the same token it seems to me they admit if they remove a key point a key point can be placed in there.

Judge Holmes: May I ask you a question? You stated that this order was not based on evidence, but was based on a theory of the Commission they were going to put into effect. I wish you would devote the balance of your three or four minutes to that proposition.

Mr. Brooks: Judge, I think I can relieve your mind of any difficulty on that, I was just coming to that.

I think there is a theory back of this, but not in the sense that Judge Suggs mentioned. I believe that this evidence, and I could discuss that, but I think some of the other gentlemen have discussed it, on which this order was based, but there has been a theory back of the granting of these certificates, regardless of how they were granted to the rail transport companies, and that theory has been that although the Interstate Commerce Act requires the proof of public convenience and necessity in connection with an ordinary applicant, that rule, under which the decisions that applicant is required to prove that his service is needed, in spite of all existing service, whether that service be

by motor truck, by rail, by airplane, by bus, by
228 wagon, or what have you. That is what the independent carrier must do.

The same rule has not been applied to the railroads. The only standard that they have had to meet is, would it improve the railroad's service? Not whether that service is needed by the public, in addition to all, but would it improve the service that has been given?

Now, that is the theory. I can give you—

Judge HOLMES: Is that based on the statutes?

Mr. BROOKS: Yes, the way the Commission has interpreted the statutes, sir. I tell you, in some cases, I have certainly argued that they should apply the same rules to railroads that they have done to the motor carriers, but they have failed to do so, and I want to call your attention to two cases in which you can confirm this.

One of them that I want to direct your attention to, is the decision of the Commission in the Columbia Motor Transport Company case, which is reported—is a rather recent decision, and for the benefit of counsel here, I will state this is a division decision, 46 MCC 69 on page 87, where the Commission was discussing the protest that had been made by the independent common carriers, and passing on that protest they said, "Since the proposed service, which was to render service, LCL service, for the railroads, would not be directly competitive, or unduly prejudicial to the service of the existing motor carriers, we may
229 in our discretion authorize applicant to perform the substituted service, even though some of the existing carriers, motor carriers, may be able to perform it successfully."

Now, bearing in mind they could not grant that to a motor carrier, if they found that another motor carrier was adequately rendering the service. But, the Commission says we can grant it to a railroad, even though we find that an existing motor carrier is adequately rendering that service, and for that reason we will disregard the protest of the motor carriers in this case, and grant the authority

A similar sort of situation is pointed out by the decision of the Commission in the Kansas City Southern Transport case. I think that has been cited to you, it is 28 MCC 5. I have particular reference to page 7, to show what the Commission meant when they talked about auxiliary and supplementary service, too.

It says, "The purpose of the condition imposed was to limit the motor carrier service"—talking about the rail motor carrier service—"to that which is auxiliary to or

supplemental of the rail service, and to prevent applicants from engaging in motor carrier operations, unconnected with any rail service."

Judge HOLMES: What is the date of that decision?

Mr. BROOKS: The date of this particular decision was decided January 24, 1941. It was submitted June
230 19, 1940. There had been a previous decision by the Division, which was in substantial accord with this. Thank you very much.

Judge HOLMES: You have completed your time.

Mr. HICKEY: May I take this opportunity to hand up our brief? I may also say, in doing that, that one of the questions just raised by your Honor is discussed in two Supreme Court decisions, which we have set forth in our brief.

Judge HOLMES: Do you wish to say anything further?

Argument by Mr. Suggs

Mr. SUGGS: If the Court please, all counsel have referred to a vast mass of decisions, which they say constitutes an administrative interpretation of statutes, and also constitutes authority for what the Commission has now done.

If the Court will refer to that vast list of decisions, which counsel for the government has appended as an appendix to his brief, the Court will find that almost without exception, those are ICC decisions, subsequent to 1943, and evidence the new policy of the Commission about what it is going to do about this matter.

Now, the Court could find that in many of those cases the railroad owned motor carrier was entirely acquiescent in the imposition of these conditions, and in some
231 cases even on its own initiative proposed the imposition of these conditions.

We simply say that is not true in our case. We were the first one they tried it out on, and we have been bucking like a steer about it ever since. We are not bound by that mass of decisions, nor any interpretation that represents.

Turning briefly to the special burden which is laid on a railroad, when it seeks a truck certificate, by the statute, not by the Commission, but by the Act of Congress, it is set out in Section 5 of the Act, which is in the appendix to our brief. Very briefly, the special points that the railroad has to carry—now, not to get a certificate on its application, but to secure approval of its purchase of an existing certificate, the law says it must prove that its ownership of that motor carrier certificate is consistent with the public interest.

In these cases, in our purchased certificates, the Commission affirmatively made that finding, that our ownership of these certificates was consistent with the public interest.

The law requires, number two, that the railroad can use that service in connection with its business. The law does not say that the railroad shall be limited to use of that service in connection with the railroad business. It simply says the railroad must prove it will be useful to it. It is not exclusive. That is one element. We proved that. The Commission affirmatively found it.

232 It further says that the Commission must find that the acquisition of that certificate will not unduly restrain competition. We made appropriate proof on that at the time we sought to buy these certificates, and the Commission affirmatively found that our acquisition of them would not unduly restrain competition.

Counsel has called attention to the special concurring opinion of Commissioner Caskey, when he said that, in the course of an opinion, if we wanted anything more than auxiliary or supplemental service, whatever that may mean, we might refrain from buying the certificate, if we didn't like the terms on which we were being permitted to buy it.

The reply to that is twofold. Commissioner Caskey's language in itself does not indicate that the phrase, at that time, had any such implications as the Commission attributes to it now. And, furthermore, when the certificate did come out, it did not contain that condition. When we saw what they did let us have, it was a clear certificate, limited only to service to points on our railroad.

Now then, counsel says that if that is all auxiliary to or supplementary means, then the other specification, the specific specification of points on our railroad is meaningless. That is not true.

Counsel read from one of the certificates saying that our routes shall go down a particular highway. Now,

233 our railroad may go between those same points, but it may not precisely parallel that highway. It may go this way. Where the railroad and the highway deviate from each other in traversing the distance between two towns, this truck line can only serve such towns as are on the railroad. That condition does mean something, and that is all in the world that auxiliary and supplemental to ever meant in original intent.

Counsel has read quite a bit of the testimony from our witness Hoffman, now dead. He did say that we wanted a supplemental service to our rail services. He did not say that was all we wanted. He did say we proposed to utilize rail rates at that time, but he did not say that—wait a minute, he said we did not propose to interchange at that time. With regards to rates, he said the rates would be based on rail rates. He did not say they would be rail rates.

The record will disclose at that time rail and truck rates were substantially the same, but the rates which were filed were not rail rates, but were truck rates, and the carrier certainly preserved the right to ship on its own bills.

Do I have any time left, Judge?

Judge HOLMES: No, it is all over, except for one minute.

Mr. SUGGS: All right, for one minute I would like to answer one question suggested by Judge Dawkins. He said he would like to hear some specific, rather than legal
234 theory, about what we are talking about.

Judge, it is this, if you want to ship a shipment, and you tender it to us, we want the right to give you our own bill of lading, take your shipment, ship it on truck rates the same as these gentlemen use, the same tariff; when we come to a point where your shipment should branch off and go some place we don't serve, we want the right to interchange it with these gentlemen, give it to them to carry on on joint rates. We want the right to carry that out in our own name, under our own bill of lading, using the same rates these gentlemen have been using, that is all we want, that is what we had originally, that is what unquestionably we were granted, that is the kind of business we want to do.

The interest of the intervenors is patent. These gentlemen don't want us to be able to compete with them on even terms, and our friends, the labor executives, want to keep that business tied on the railroads, so that particular bunch of workmen will get to handle it. We are not differing with their self-interest, but we simply say it is not public interest that they represent.

Judge HOLMES: We will take this case under consideration, and recess.

* * *

235 Reporter's Certificate to foregoing transcript omitted in printing.

236 In United States District Court

Findings of Fact and Conclusions of Law—
Filed December 14, 1949

The above entitled suit came on to be heard on November 11, 1949 before a specially constituted court of three judges consisting of the Honorable Edwin R. Holmes, Circuit Judge; the Honorable Ben C. Dawkins, District Judge; and the Honorable Wm. H. Atwell, District Judge and supplementing the findings made in the opinion of the majority of the Court by the Honorable Wm. H. Atwell, District Judge, the following ultimate facts are found:

1. The petitioner, hereafter called "Transport", is a corporation wholly owned by The Texas and Pacific Railway Company and under appropriate charter powers and certificates of authority, is operating as a common carrier by motor vehicle in both intra- and interstate commerce over a series of connected routes generally paralleling its parent railroad and extending from New Orleans, Louisiana to El Paso, Texas.

2. Transport carries on its interstate business under sixteen common carrier certificates issued to it by the Interstate Commerce Commission; thirteen of which were issued under Section 207 of the Interstate Commerce Act on Transport's original application, and three of which were issued under Sections 206 and 213 (now Section 5) of said Act, evidencing operating rights purchased by Transport with Commission approval from other common carrier motor carriers who were so operating on and prior to June 1, 1935.

3. With exceptions not important here, each of the certificates in question at the time of issuance carried a condition prohibiting Transport from serving or interchanging traffic at any point not a station on the line of its affiliated railways, and eleven of the Section 207 certificates contained a condition limiting the authorized service to that which was "auxiliary to or supplemental of train service" of the affiliated railways. All of the certificates contained a provision reciting that the certificate should be subject to such further conditions as the Commission might thereafter find necessary in order to restrict the operation to service "auxiliary to or supplemental of train service."

4. At the time of their original use in the several certificates, the words "auxiliary to or supplemental of train service" did not imply more than a restriction limiting the motor carrier service to points on the lines of the parent railroad and its rail subsidiaries; and when the several

certificates were issued, the Commission did not intend that the quoted words should preclude Transport from issuing its own bills of lading and serving the public generally on motor rates, including joint motor rates on through routes established with other motor carriers.

237 5. On January 21, 1943, the Commission issued a report with respect to eleven of Transport's Section 207 certificates, prohibiting Transport from participating in certain motor carrier tariffs and declaring that the condition limiting operations to service "auxiliary to or supplemental of" train service confined it to carriage of shipments on rail bills of lading at rail rates, and precluded its participating in joint motor rates with other connecting motor carriers. On January 22, 1948, pursuant to a hearing held on its own motion on October 17, 1944, the Commission issued a report and order repeating its 1943 interpretation of the words "auxiliary to or supplemental of train service" and imposing that condition on Transport's five certificates which did not contain it originally, including the three certificates issued under Sections 206 and 213 of the 1935 Act. This interpretation of the quoted phrase was not the Commission's original intent when the several certificates were issued, but rather reflected a change in the Commission's policy in such matters which had developed after the certificates were issued.

6. Defining "key points" as points between which, or through, to or from more than one of which, shipments might not be transported, the Commission in its 1948 report and order designated New Orleans, Alexandria and Shreveport, Louisiana, and Fort Worth-Dallas (considered as one), and Abilene, Texas, and Texarkana Tex.-Ark., as "key points" with respect to fourteen of the certificates to which no such restriction had originally attached, thus breaking Transport's permissible operations into a number of short hauls. Three of such certificates specifically authorized operations between New Orleans and Shreveport, La., between Dallas and Abilene, and between Big Spring and Pecos, Texas, respectively.

7. Prior to the Commission's 1943 report Transport issued its own bills of lading and participated in motor carrier tariffs under its Section 207 certificates as well as its "purchase" certificates, and still does so under the five certificates (including the three "purchases" certificates) which were not included in the 1943 report, all with full knowledge of the Commission.

8. Transport has invested $96,674.18 in acquiring its certificates, including an aggregate purchase price of ap-

proximately $87,000.00 for the three certificates issued under Sections 206 and 213 of the 1935 Act. The interstate certificates have an aggregate present market value of approximately $65,000.00. If the Commission's 1948 orders were carried into effect, the value of the certificates would be destroyed. In addition Transport would lose some $240,000.00 per annum in revenue and its presently profitable operation would henceforth produce a loss.

9. The Commission gave Transport notice of its October 17, 1944 hearing by orders reciting only that its purpose was

> "to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates * * *"

Representatives of competing motor carriers, the shipping public and railway labor, participated in the hearing and inquired of the hearing officer its specific purpose. The examiner refused to elaborate on the notice and stated that in the absence of any protest, probably no change would be made in Transport's certificates. Thereupon the other participants joined Transport in requesting that the hearing be cancelled and the proceedings discontinued. The request was refused.

10. In approving Transport's purchase of each of the certificates issued under Sections 206 and 213 of the 1935 Act (Sections 206 and 5(2)(b) of the 1940 Act), the Commission found that the transaction would be consistent with the public interest, would enable the affiliated railroad to use motor service to public advantage in its operations, and would not result in undue restraint
238 of competition; and the Commission has received no contrary evidence on these points subsequently.

11. The Commission has received no evidence of facts specified as cause for revocation of the certificates under Section 212(a) of the Act, and has neither instituted nor entertained any proceedings under that section.

Conclusions of Law

We conclude as matters of law:

1. The Commission's orders herein involved have the effect of revoking, or partially revoking Petitioner's interstate common carrier certificates, in violation of the terms of the Interstate Commerce Act, and particularly Section 212(a) thereof.

2. Said orders are confiscatory of Petitioner's property in violation of the Fifth Amendment of the Constitution of the United States.

3. In substantially diminishing Petitioner's operating rights which it had purchased from other motor carriers in bona fide operation on and prior to June 1, 1935, covered by certificates in the Commission's proceedings numbered sub-nos. 5, 6 and 8, the Commission's said orders are violative of the terms of the Interstate Commerce Act and particularly Section 206 (a) thereof.

4. In restricting Petitioner to carriage of shipments on rail bills of lading, for specified railroads, and precluding it from dealing directly with the public generally, said orders are violative of the terms of the Interstate Commerce Act and particularly Sections 203 and 207 thereof.

5. In restricting Petitioner to carriage of shipments at rail rates, and precluding it from utilizing motor rates, said orders are violative of the Interstate Commerce Act and particularly Sections 216 and 217 thereof.

6. In precluding Petitioner from interchanging freight with other common carrier motor carriers on through routes under joint motor rates, said orders are violative of the Interstate Commerce Act and particularly Section 216 thereof.

7. In imposing conditions on Petitioner's certificates which would have the effect indicated in the several foregoing conclusions, said orders are violative of the Interstate Commerce Act and particularly Section 208(a) thereof.

8. Said orders of the Commission, in imposing additional conditions on Petitioner's certificates, and in changing the interpretation of conditions originally imposed on some of said certificates, are wholly unsupported by evidence.

9. Petitioner was not accorded due process of law in the proceedings culminating in the Commission's entry of said orders.

Done at Dallas, Texas this 6th day of December, 1949.

/s/ EDWIN R. HOLMES
United States Circuit Judge

/s/ WM. H. ATWELL
United States District Judge

.....
United States District Judge

From the foregoing conclusions of law I dissent.

/s/ BEN C. DAWKINS
United States District Judge

239 In the United States District Court

Objections to Findings of Fact and Conclusions of Law—Filed Dec. 12, 1949

Come now the defendants United States and Interstate Commerce Commission and file this their objections to the findings of fact and conclusions of law prepared by plaintiff in the above-captioned case. Defendants would make known to the Court that the "alleged typographical errors," contained in the Court's opinion approved by the majority of the Court and filed herein on November 16, 1949 have been substantially changed as shown by the revised copy of the opinion filed on the 25th day of November, 1949; that as shown by the letter of Judge William H. Atwell to Mr. J. T. Suggs, General Counsel, Texas and Pacific Railway Company, dated November 23, 1949, "the suggestions with reference to alleged typographical errors contained in your recent memorandum * * * should be made and [Judge Atwell] direct(s) that you file the enclosed corrected opinion in this matter, with the Clerk of the Court" indicates that the corrected and revised copy of the opinion is the opinion of Judge William H. Atwell and not the opinion of a majority of the Court, Judge Ben C. Dawkins having dissented from the original opin-

240 ion and no approval having been shown by Judge Edwin R. Holmes to the revised opinion filed herein; that said revised opinion filed herein has been substantially changed in many particulars. For example, on page 4 of the original opinion the last sentence of the second paragraph has been changed from:

> These certificates were validly issued under Sec. 207 of the Motor Carrier Act of 1935 and Part 2 of the Interstate Commerce Commission Act of 1940.

to:

> These certificates were validly issued under Sec. 206 and Sec. 213 of the Motor Carrier Act of 1935 which later became Part 2 of the Interstate Commerce Act of 1940.

and on page 11 of the original opinion the last sentence has been changed from:

> If so, that question was for the determination of the Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. That question was not for the court. It could not be a question for the Commission.

to:

> If so, determination of that question was provided for by Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. It required the Commission to determine the question before authorizing such consolidation or purchase, and in this case the Commission did determine the question in the negative and authorized the purchases here involved.

That on December 5, 1949 defendant United States received a letter from Frank B. Potter, Esquire, United States Attorney, stating that "Judge Atwell advised that he would take no action on the proposed findings of fact and conclusions of law for one week, or until December 8, 1949"; that on December 7, 1949 defendant United States requested a ten day extension of time for it and for defendant Interstate Commerce Commission to have an opportunity to request additional findings of fact and conclusions of law and to file objections to the findings of fact and conclusions of law prepared by plaintiff, and such request for an extension of time was denied by Judge Atwell;

241 that the record involved in this case is very voluminous and contains several hundred pages of testimony and many exhibits and because of broad general findings submitted by plaintiff considerable time is necessary to check said record in the interest of accuracy; that no findings of fact, conclusions of law or judgment had been filed in the clerk's office on the 12th day of December, 1949; and defendants United States and Interstate Commerce Commission file these objections to the proposed findings of fact and conclusions of law prepared by plaintiff:

I

The fourth finding of fact states the conclusions of plaintiff, defining how plaintiff would like to have the words "auxiliary to or supplemental of train service" construed. There is no evidence in the record of this case to support plaintiff's theory as alleged in said finding that the words "auxiliary to and supplemental of train service" only "imply a restriction limiting the motor carrier service to points on the parent railroad and its rail subsidiaries" and there is no evidence in the record to support plaintiff's finding that "when the several certificates were issued, the Commission did not intend that the quoted words

should preclude Transport from issuing its own bills of lading and serving the public generally on motor rates, including joint motor rates on through routes established with other motor carriers." There is no finding or anything in the opinion of the Court upon which to base such a finding of fact. The entire finding is an unwarranted conclusion of plaintiff, unsupported by the record or otherwise.

II

The fifth finding states the conclusions of the plaintiff as to the reasoning and the effect of the reports issued by the Commission, dated January 21, 1943 and January 22, 1948. The decisions of the Commission construing Section 5(2)(b) (formerly Section 213) of the Act have consistently interpreted the words "auxiliary to or supplemental of rail service" to mean service by substitution of
242 trucks for peddler or way freight in what is commonly called "station to station" service and non-approved operations are these which otherwise compete with the railroad itself, those which compete with the established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier. The Commission has never given any different interpretation to the words "auxiliary to or supplemental of rail service" since the first decision made in the *Barker* case to date, and the so-called "reflected change in the Commission's policy in such matters" is wishful thinking on the part of plaintiff and not supported by the Commission's decisions or the record in this case or by the opinion of this Court. The record in this case clearly shows that the proceedings, leading up to the Commission's orders of January 21, 1943 and January 22, 1948 and the hearing of October 17, 1944, were instituted upon the filing of petition of plaintiff on August 7, 1941 seeking an order or instruction defining its rights under certain of its certificates. These orders and hearings were not instituted by the Commission on its own motion as implied to the contrary by said proposed finding five, and the final report and order of January 28, 1948, herein involved, actually defines and determines the scope of the certificates issued to plaintiff as sought in its petition filed August 7, 1941.

III.

The sixth finding of fact states the conclusions of plaintiff as to the effect of the Commission's report in 1948 had

on plaintiff's operations as compared to the restrictions that originally attached in the issuance of said certificates which were all conditioned to require Transport's operations to be "auxiliary to or supplemental of rail service" as these words were clearly spelled out in the *Barker* case and more than one hundred cases thereafter. There is no evidence in the record to support any such interpretation. The sixth finding is not a statement of fact as shown, or supported by the record, but is simply an erroneous conclusion or construction of plaintiff based upon self
243 interest rather than facts of record. If considered as a fact, the record evidence does not support such finding.

IV

The seventh finding states the conclusions of plaintiff as to the knowledge the Commission had of plaintiff's operations. If plaintiff prior to the Commission's report in 1943 was issuing its own bills of lading and participating in motor carrier tariffs under its Section 207 certificates and still does so under its purchase certificates under Section 5, it was exceeding its certificated authority under the applications filed, the proof made and the authority granted, and there is no evidence in this case to support any such finding. On the contrary, any finding of fact to the effect that the Commission approved such bills of lading as were issued by plaintiff, and participated in Motor Carrier tariffs, as implied in the statement of finding "all with full knowledge of the Commission" is entirely unsupported by evidence of record. The record shows that prior to the filing of petition of plaintiff to have its certificate rights defined, the filing of tariffs was questioned by the Commission, and actually resulted in the petition of plaintiff to have its certificates interpreted with reference to the limits of its operating authority.

V

The eighth finding states the position of plaintiff as to the purchase price of certain certificates, their present market value, and the estimated amount of annual revenue of Transport, and the effect compliance with the Commission's orders would cause in damage to plaintiff. The record in this case fails to show that the issuance of confiscation was properly presented to the Commission for its determination and this issue is therefore not properly before this Court for judicial review. The finding that cer-

tain sums were paid as the purchase price of certain certificates is misleading, and a misstatement of the record evidence relating thereto. The purchase price
244 as stated in said finding included the purchase of rolling stock and other property. The finding statement indicates a loss of $22,000 in the value of the certificates since the purchase thereof, a loss which apparently is accounted in the depreciation of the rolling stock and other personal property acquired along with the purchase of operating rights.

VI

The ninth finding is immaterial, irrelevant and unnecessary to the determination of issues herein, and by implication constitutes a misstatement of fact, or is misleading in omitting a full statement of facts relating to the proceedings, and the purpose of the hearing with particular reference to the failure to show that the further hearing was an alternative sought by plaintiff under its petition for reconsideration of and oral argument on the order of January 21, 1943, as filed on May 20, 1943.

VII

The tenth finding states the conclusions of plaintiff as to the effect of the approval of the Commission of the certificates issued plaintiff under Sections 5 and 206. The record shows the terms, conditions and limitations under which the Commission issued said certificates. The finding is misleading and in error in failing to state all of the facts of record relating to the Commission's approval of plaintiff's purchase of such certificates and particularly in failing to state the conditions, limitations, restrictions and reservations included in the reports and certificates whereby plaintiff received its grants of operating authority.

VIII

The eleventh finding states the plaintiff's theory regarding the applicability of Section 212(a) to the case at bar. Section 212(a) is not applicable to this case.

Due to the limitations of time placed upon these defendants within which response could be made to these
245 proposed findings of fact and conclusions of law submitted by plaintiff, the above objections and exceptions to plaintiff's proposed findings of fact and conclusions of law are submitted with the request that defendants' proposed findings of fact and conclusions of law be

considered by the Court when submitted by said defendants as soon as the same can be reasonably prepared and submitted. These defendants regret that the time allowed by the ruling of the district judge has not permitted preparation and submission of defendants' proposed findings and conclusions along with the objections to plaintiff's proposed findings and conclusions.

Objections to Conclusions of Law

In addition to the general objections above stated, defendants object to all of the conclusions of law on the general ground that they do not conform to the Court direction and largely constitute argumentative matters which have not been approved by the Court and which are contrary to authoritative court decisions on the subject.

The proposed conclusions of law are based upon plaintiff's findings of fact which we have shown are conclusions of plaintiff unsupported by the record, by the testimony and the opinion of this court. The proposed conclusions of law are broad and loosely drawn and are not responsive to the opinion of the Court.

The Commission's orders here involved were validly made, were within its statutory powers, were based upon substantial evidence and were made in accordance with due process of administrative law.

Respectfully submitted,

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Interstate Commerce Commission

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246 In United States District Court

Defendants' Suggested Findings of Fact and Conclusions of Law—Filed Dec. 19, 1949

The above entitled action having come on to be heard on November 11, 1949 before a duly constituted district court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, and all parties being represented by counsel, and the cause having been submitted upon final hearing, and the court having taken the cause under advisement and considered the pleadings, the evidence, the argument and briefs of counsel, and the court being fully advised in the premises, now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff, The Texas and Pacific Motor Transport Company, hereinafter called "Transport," is a wholly-owned subsidiary of the Texas and Pacific Railway Company, hereinafter called "Railway," a corporation organized and existing under the laws of the State of Texas, and is a common carrier by motor vehicle of general commodities in interstate commerce authorized to conduct an
247 auxiliary and supplemental service to its rail operation over an extensive system of regular routes, paralleling generally the Railway's lines or those of certain of its subsidiary rail carriers in the States of Louisiana, Texas, Arkansas, and New Mexico.

2. Transport carries on its interstate business under sixteen certificates issued to it by the Interstate Commerce Commission. Thirteen of these certificates were issued under Section 207 of the Interstate Commerce Act by original application. The other three certificates were issued under Sections 206 and 213 (now Section 5) of the Act. These latter three represent rights purchased by Transport with Commission approval from common carrier motor carriers who were so operating on and prior to June 1, 1935.

3. With exceptions not important here, each of the certificates in question at the time of issuance carried a condition prohibiting Transport from serving or interchanging traffic at any point not a station on the line of its affiliated railways, and eleven of the Section 207 certificates contained a condition limiting the authorized service to that which was "auxiliary to or supplemental of train service" of the affiliated railways. All of the certificates contained

a provision reciting that the certificate should be subject to such further conditions as the Commission might thereafter find necessary in order to restrict the operation to service "auxiliary to or supplemental of train service."

4. On August 7, 1941, petition was filed by Transport for an order or instructions defining its rights under certain of its certificates. The petition which was filed is captioned "Petition of the Texas and Pacific Motor Transport Company for orders defining its rights under certain certificates, or for alternative relief," and prayed that the Commission direct its officers to accept, file and maintain the directory published by the company and to issue instructions that it be accorded equal rights with other common carriers, of filing and maintaining tariffs. The Com-
248 mission reopened the proceedings on a number of the applications of Transport, and after hearing, issued its report dated January 21, 1943, 41 M. C. C. 721.

5. The Commission found, in view of the restrictions in its certificates limiting the service authorized to that which was auxiliary to and supplemental of rail service, that Transport was without authority to perform service under all-motor local and all-motor joint rates with connecting motor carriers, or to substitute rail service for motor service and might not properly be a party to tariffs continuing all-motor rates or to tariffs providing for substitution of rail for motor service.

6. On May 20, 1943 Transport and Railway filed a joint petition for Reconsideration and Oral Argument. Relief was requested or in the alternative a further hearing. The Petition was denied February 14, 1944 but on that same date the Commission entered an order reopening the cases for further hearing, including therein the three purchase certificates not included in the prior hearing.

7. On August 5, 1944, Transport petitioned the Commission that no further hearings be had, pointing out that its situation had changed due to the fact that Railway had been authorized to participate in motor carrier tariffs. This petition was denied and the proceeding set for hearing by order of August 30, 1944. Hearing was held October 17, 1944.

8. The Commission, thereafter, issued its report and the order of January 22, 1948. In that report, the Commission found that the certificates issued to Transport in the former proceedings should be modified so as to allow the transportation of general commodities without exception, and to require that all future operations conducted under

said certificates shall be subject to the following conditions and restrictions in lieu of those previously set forth therein.

These conditions are:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, the train service of the Texas and Pacific Railway Company, the Weatherford, Mineral Wells and Northwestern Railway Company, or Texas-New Mexico Railway Company and, between El Paso and Sierra Blanca, Tex., the train service of Texas and New Orleans Railroad Company, hereinafter called the Railways.

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2. Applicant shall not render any service to or from any point not a station on a rail line of the Railways.

3. No shipments shall be transported by applicant between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Tex-arkana, Tex.-Ark., Fort Worth-Dallas (considered as one), Abilene, Monahans, and El Paso, Texas.

4. All contractual arrangements between applicant and the Railways shall be reported to us and shall be subject to revision if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as in the future we may find necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, the train service of the Railways.

9. A petition for Reconsideration by the entire Commission and for Vacation of the Report and Order and for oral argument was filed by Transport and was denied May 9, 1949.

10. Transport accepted the certificates in question with conditions, and in each case subject to a condition, whereby the Commission reserved the right in the future to impose such additional revised conditions as it might find necessary in order to restrict Transport's operation to a service auxiliary to or supplemental of rail service.

11. The Interstate Commerce Commission had authority to impose the conditions and restrictions originally imposed by virtue of Section 5, Part I (which now embodies terms of § 213) of the Interstate Commerce Act, and it had authority to impose the later conditions in its order of January 22, 1948 by virtue of the express reservation in

the certificates themselves. Also by virtue of the mandate of Congress as expressed in the National Transportation Policy, it had authority to impose both sets of conditions.

12. The conditions are appropriate and reasonable to insure that the operations by Transport were confined to the service authorized by the Commission, namely, service auxiliary to, or supplemental of, rail service.

13. The imposition of these conditions does not invade any rights of Transport, nor deprive it of any rights to which it is entitled but on the contrary the action of the Commission in the respects complained of by Transport was fully warranted under the facts and the applicable law.

14. The Commission had before it substantial evidence in support of its findings; and this court adopts as its own the statements set forth in the commission's said report of January 22, 1948.

Conclusions of Law

Upon the foregoing facts, the court makes the following conclusions of law:

1. This court has jurisdiction of the parties and the subject matter of this suit.

2. The certificates, operating rights and privileges which Transport had acquired were subject originally to a condition which put Transport on notice that the service to be performed by it was that of a supplemental and auxiliary service to that of the rail service.

3. At all times during the proceedings the interpretation of the Interstate Commerce Commission as to the meaning of "auxiliary and supplemental service" has been consistent and said interpretations prohibited the rendition of all-motor service directly for the shipping public at all-motor rates.

4. The Interstate Commerce Commission by its report and order of January 22, 1948 and its denial of reconsideration of May 9, 1949, acted within its statutory authority in finding that Transport is without authority to perform service which is not auxiliary to and supplemental of the rail service. Such restrictions are within the statutory authority of the Commission as expressed in Sections 5 and 208 and as expressly reserved in the original certificates. Therefore, said restrictions do not constitute a taking of Transport's property without due process but rather restrict Transport to the type of service originally authorized.

5. The Commission's action in imposing a key-point restriction that no shipments shall be transported by Transport between specified points or through or to or from more than one of said points, is lawful. Such a restriction is consistent with the legislative history of Section 213 (now Section 5) of the Act and is in accord with the mandate upon the Commission as expressed by Congress in the National Transportation Policy.

6. The reports and orders of January 22, 1948 and May 9, 1949 restricted Transport only to the type of service originally granted to it and they are only a restatement of the type of service which the Congress intended that a railroad might use if it decided to operate motor vehicles in conjunction with its rail service. Sections 5 and 208 of the Act make it clear that railroads were to be restricted to a special type of motor vehicle service if, indeed, they were to be allowed to operate motor vehicles at all.

7. There is here no question involving Section 212 (49 U. S. C. A. § 312) of the Act. There has been no revocation of a certificate so Section 212 is not applicable in the instant proceeding.

8. Any damage which Transport might suffer by virtue of the report and order of January 22, 1948, by denying it the right to transport traffic at all-motor rates as a common carrier by motor vehicle and restricting it to key-point service, is *damnum absque injuria*, since the grant of the certificates was always subject to the original limitations upon the service as specifically imposed, including the reservation of the right to add additional restric-
252 tions, as is required by both statutory law and by the National Transportation Policy.

Done at Dallas, Texas, this day of , 1949.

.....
United States Circuit Judge

.....
United States District Judge

.....
United States District Judge

253 United States District Court
Dallas 1, Texas

Chambers of
JUDGE WILLIAM HAWLEY ATWELL

December 29th, 1949.

Honorable Edwin R. Holmes,
United States Circuit Judge,
New Orleans, Louisiana.

My dear Judge Holmes:

On yesterday, December 28th, about 3:30 P. M., there was delivered to me, in my chambers, the enclosed carbon copy of a motion made by an intervenor in No. 3696-Transport vs. United States, *et al.*

My personal opinion is that this matter should have an end, and I am not going to make the findings requested, but I thought it appropriate to forward it to you for such expression as you might see fit to make, with the request that it then be forwarded to Judge Dawkins, with the same request, and then returned to me.

If you gentlemen think the findings should be made, I shall be glad to do it, and then forward it to you. But, I suspect that neither of us desires to make a serial out of this record. It was closed sometime ago, and I think that is sufficient.

With personal regards and heartfelt wishes for you and your loved ones for the coming year, I am

Yours very earnestly,

WM. H. ATWELL
United States District Judge

I concur in the above.

E. R. HOLMES
Judge

I concur.

BEN C. DAWKINS
Judge

CC—

HON. BEN C. DAWKINS,
U. S. District Judge,
Monroe, Louisiana.

254 In United States District Court

Motion to Allow the Filing of a Motion to have the Court make Additional Findings of Fact—Filed Dec. 28, 1949

Now comes Intervenor, Regular Common Carrier Conference of American Trucking Associations, Inc. and moves the court to allow it to file the attached Motion for Additional Findings of Fact and for grounds therefor would show to the Court as follows:

I.

The judgment in this proceeding was entered December 14, 1949. Under Rule 52(b) of Federal Rules of Civil Procedure parties are allowed ten days after such date to file a motion seeking to have the court make additional findings of fact. This period of time as computed under Rule 6 of Federal Rules of Civil Procedure would expire on December 25, 1949, a Sunday. As December 25th was also Christmas Day the succeeding Monday, or December 26th, was considered by most business establishments and government agencies as the holiday for Christmas, and, therefore, applying these facts to Rule 6 would result in the time expiring Tuesday, December 27th.

II.

It is common knowledge that the approach of Christmas Holidays disrupts ordinary business routine and in fact delays the transmission of information by the United
255 States mails. Intervenor's counsel resides in Dallas but Intervenor's main office is in Washington, D. C. and the necessity of consultation and conferences between counsel and client, even though conducted by telephone, telegraph and mail, have necessarily required some time, which time has been to some extent prolonged by the Holiday Season mentioned above.

III.

The additional findings requested in the attached Motion are based upon undisputed evidence of record and the consideration of the request for these additional findings will not in Intervenor's opinion delay the ultimate disposition of this matter.

WHEREFORE, premises considered, Intervenor prays that the Court will, in accordance with Rule 6(b) of Federal Rules of Civil Procedure, find that the failure to file such

Motion heretofore has been as a result of excusable neglect and that the attached Motion should be accepted for filing.

Respectfully submitted,

/s/ FRANK C. BROOKS
Frank C. Brooks
Attorney for the Regular Common Carrier Conference of American Trucking Associations, Inc.

A copy of the above and foregoing Motion has this date been forwarded by mail to counsel for all parties of record in this proceeding.

Dated at Dallas, Texas, this 28th day of December, 1949.

/s/ FRANK C. BROOKS
Frank C. Brooks

CALLAWAY & REED
305 Empire Bank Building
Dallas, Texas

256 In United States District Court

Motion for Additional Findings of Fact—Filed Dec. 28, 1949

Now comes Intervenor, Regular Common Carrier Conference of American Trucking Associations, Inc., and moves the Court to make the additional findings of fact set forth below, and for grounds therefor would show to the Court as follows:

I.

The requested additional findings are:

(1) The conditions set out in the Commission's order of January 22, 1948, with the exception of the restriction prohibiting shipments being transported entirely by motor vehicle between certain specified points, will not in anyway change Petitioner's physical handling of shipments tendered to it for transportation.

(2) As The Texas and Pacific Railway Company is a party to various motor carrier tariffs, all shipments transported over through routes, under joint through rates and in joint-line movement by the railroad company and motor carriers not connected with a railroad company move on motor carrier rates regardless of whether the physical handling of the shipment on the part of the railroad is accomplished in the Transport Company's truck or the Railroad Company's box cars.

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II.

The requested additional findings are based upon uncontradicted evidence of record introduced by Petitioner. Inasmuch as Petitioner's complaint is, among other things, directed to the effect that the Commission's order of January 22, 1948 will have upon the physical handling of shipments and the rates assessed on such shipments when transported in joint line service with other motor carriers, Intervenor feels that the findings of the Court should clearly reflect the effect that such order will have upon the physical handling and the rates to be charged.

WHEREFORE, premises considered, Intervenor prays that the Court will make the additional findings requested herein.

Respectfully submitted,

/s/ FRANK C. BROOKS
Frank C. Brooks,
Attorney for the Regular Common Carrier Conference of American Trucking Associations, Inc.

A copy of the above and foregoing motion has this date been forwarded by mail to counsel for all parties of record in this proceeding.

Dated at Dallas, Texas, this 28th day of December, 1949.

/s/ FRANK C. BROOKS
Frank C. Brooks

CALLAWAY & REED
395 Empire Bank Building
Dallas 1, Texas

258 In the District Court of the United States
For the Northern District of Texas,
Dallas Division

No. 3696—Civil.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPLICATION TO ENJOIN INTERSTATE COMMERCE COMMISSION'S ORDER.

I dissent
BEN C. DAWKINS

J. T. Suggs, D. L. Case, Robert Thompson, William R. McDowell, John C. Robertson, J. L. Lancaster, Jr., W. O. Reed, Claude Williams, all of Dallas, Texas, for the Petitioner;

H. L. Underwood, Assistant Chief Counsel, Interstate Commerce Commission, Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Washington, D. C., Frank B. Potter, United States Attorney, Fort Worth, Texas, O. M. Harrell, Assistant United States Attorney, Dallas, Tex., for the United States;

E. J. Hickey, Jr., Washington, D. C., Harmon L. Watkins, Dallas, Texas, of counsel, Mulholland, Robie, McEwen & Hickey, Washington, D. C., for Railway Labor Executives Assn., Intervenors, Callaway & Reed, Dallas, Texas, for Regular Common Carrier Conference of the American Trucking Associations, Inc., Intervenor.

259 *Opinion—Filed Nov. 16, 1949*

Before Circuit Judge Holmes and District Judges Dawkins and Atwell.

Atwell, District Judge.

The petitioner, hereafter known as "Transport," is a corporation with its stock wholly owned by the Texas and Pacific Railway Company.

The Texas and Pacific Railway Company, hereinafter designated, "Railway," is a corporation created by virtue of an Act of Congress.

Transport is authorized to engage in the business of a common carrier by motor vehicle, or, by any means whatsoever, and partly by one means and partly by another, and by arrangement, or, contract with other common carriers.

It may lease, contract with, or, otherwise deal in truck, bus, stage, or, other transportation systems.

It has carried on this business for many years, subject to the provisions of the Interstate Commerce Commission Act. Such activity has been both interstate and intrastate, in the states of Texas, Louisiana, and New Mexico. Its intrastate business has been under common carriers' certificates issued by the respective states of Texas and Louisiana. It does not operate intrastate in the state of New Mexico. It has engaged in intrastate business in Texas, New Mexico and Louisiana under certificates required by purchase and original application which were issued by the Interstate Commerce Commission from time to time.

260 After the acquisition of authorization to so engage, it invested large sums of money therein. It claims that the cost of certificates authorized by the Commission, amounted to $96,674.18. That in addition to this cost, it has invested heavily in equipment, and transportation facilities for the proper maintenance and prosecution of this business to the extent of $270,257.80. That it is earning gross revenues in interstate transportation in the approximate sum of $20,000 per month, and approximately $150,000 per month from intrastate operation.

That the purpose of its organization, in 1929, was to haul less-than-carload freight shipments, known in its petition as "merchandise traffic," to, from and between stations on the line of Railway. That its schedule of rates on such traffic between such local stations was the same as that maintained by Railway, and in that year it published station-to-station rates on said merchandise, which were served by Railway, corresponding to those of motor carriers, which rates included pick-up and delivery service. It issued bills of lading in its own name, but the transportation, except for local pick-up and delivery service was performed by Railway under arrangements between it and Transport.

In November, 1935, Transport negotiated common carrier-over-road operations between Monahans, Texas and Lovington, New Mexico.

In 1935 it secured authority from the Commission to purchase certificates of convenience and necessity from

261 other common motor carriers, which had been established prior to the Motor Carrier Act of 1935, and commonly known as "grandfather rights."

It also purchased the same sort of rights from W. A. Johnson, Johnson Motor Lines, and the Fort Worth Ware-

house and Storage Company. These all related to motor carriers along the line between Dallas and Abilene and Big Spring, Texas.

In 1937 it purchased from the Southern Transportation Lines common carrier and grandfather rights between Dallas and Wills Point, and Gladewater, Texas and Shreveport, Louisiana. That along the routes of these certificates are such important distribution centers, shipping points, designations and gateways as Dallas, Fort Worth, Abilene, Sweetwater and Big Spring, Texas and Shreveport, Louisiana. That all of the interstate traffic handled by Transport either originates in or terminates on, or, moves over such routes. These certificates were validly issued under Sec. 207 of the Motor Carrier Act of 1935 and Part 2 of the Interstate Commerce Commission Act of 1940.

That such original and purchased certificates had no such conditions attached to them by the Commission as the Commission determined in its orders of January 22, 1948, and May 2, 1949. Such orders, Transport claims, ingraft on the certificates which it owns, certain conditions which destroy, or, materially diminish the common carrier character of such rights and constitutes a taking of pri-
262 vate property for a public purpose without just compensation contrary to the 5th Amendment.

It also claims that it had no notice of a hearing, such as is required, for such action, and, that no appropriate testimony was had by the Commission to substantiate its findings. That it will suffer irreparable damage if such orders are not restrained and that its loss will be approximately $240,000 per year, and, in addition, would deprive Transport of the value of its investments in the certificates aggregating $96,674.18, as well as of its physical property devoted to interstate transportation in the sum of $25,000. That its business in 1948 accorded it a net operating profit, before taxes, of $118,808.06, and a net profit of $69,959.41.

It denies that it has any complete remedy at law which is speedy and adequate. It asks for temporary restraint and for the impanelling of a three-judge court, and, a permanent injunction.

Attached to the petition are informative schedules, "A", "B", and "C". "A" being a report of hearings: "B" showing certificates, and "C" showing a map of Transport's and Railway's system.

The answer of the Commission concedes jurisdiction and admits the purpose of the suit. It admits the acquisition of

the certificates, and that Transport has conducted operations in interstate commerce by virtue of the same,
263 but, it contends that the certificates contained restrictions in respect "to operations or other matters." It does not answer as to operations by Transport before Motor Carrier Act. It denies that the certificates purchased granted "grandfather rights," and claims that they were limited to operations "auxiliary to, or, supplementary of, rail carrier service." It admits the orders and reports pleaded, and that they are the best evidence of its findings, conclusions and requirements. It denies that any such orders, or, requirements are arbitrary, or, the reversal of former policy with respect to the operation authority granted to Transport. It denies that such orders are unlawful. It denies that Transport will suffer irreparable damage unless its orders of January 22, 1948 and May 9th, 1949, are set aside.

The answer, therefore, makes an issue, upon which testimony was considered appropriate, with reference to investment; carrying on the business before Motor Carrier Act; as to whether the certificates were conditioned "auxiliary to, or, supplemental of said carrier services;" damages; notice of hearing and a proper hearing.

Upon these controverted issues the testimony discloses that the allegations as to the controverted issues, made in the petitioner's complaint, are entirely supported by the testimony.

As to a hearing there appear cross currents in 302 U. S. 388, spoken of a little later, and, 331 U. S. 334-336, cited
by Railway, as to the inability of this court to have a
264 hearing on this question. 331 U. S. treated only the rate, not the question of a hearing in the constitutional sense.

The defendant, in some of the exhibits, and in its own pleadings, and particularly in its report on the "further hearing by Div. 5," seems to think, and so expressed the thought that Transport's line of service, though justly and reasonably and legally authorized by both state and nation, was too long, and that it made one system. We may appropriately ask, may such a line, 1150 miles long, validly acquired from time to time, be summarily broken into parts, and its independence destroyed? Does the Act justify such destruction?

The wisdom of Congress is displayed in the addition to the Motor Carrier Act which permitted such a service to be

organized by and for the service of the Railroad. The main purpose of the supervision by Commission is to save the shipping public from the charge of exorbitant rates, and the nuisance of a monopolizing combination.

The rates charged and filed by Transport were in complete accord with other motor carriers. Highly satisfactory to such shippers and receivers of freight as are represented by the Chambers of Commerce in Dallas and Fort Worth as evidenced by their respective spokesmen.

This is not to say that the granting of a certificate places the holder thereof beyond the power of the Commis-
265 sion to supervise and to continue to inspect its service. But, it is to say that the holder of the certificate must be recognized as the holder of property and that such property may not be taken from it without due process and with an arbitrary or unreasonable motive.

The Supreme court in Railroad Commission v. Pacific Gas Co, 302 U. S. 388, treated this question at considerable length, and stated that the utility had the right to a fair and open hearing, as one of the rudiments of fair play assured to every litigant by the federal Constitution.

If rates, said the court in that case, are confiscatory, then the jurisdiction of the Commission is at once appropriately invoked. Courts do not have a right to question the correctness of the method, or, reasoning adopted by a regulating agency, but the court does have a right to determine whether, or, not the rate will result in confiscation.

The soul of the controversy here, is the result that the order has. There is no debate here over the question of inappropriate charges, or, tariff rates, or, combinations, or, monopolies. The question here is *the breaking up of a system that has been validly acquired, for a legal purpose, and which will result in confiscation, and, irreparable damage to the complaining carrier.*

266 There are countless other decisions, impinging upon the theories that are involved in this interesting controversy, such as:

I. C. C. v. Parker, 326 U. S. 60;
U. S. v. Detroit Navigation Co., 326 U. S. 236;
New York v. United States, 331 U. S. 334;
C & O v. U. S., 283 U. S. 35;
U. S. v. Pierce Auto Lines, 327 U. S. 515;
I. C. C. v. Illinois Central, 215 U. S. 452;
U. S. v. Caroline Freight, 315 U. S. 475;
Crichton v. U. S. 56 F. (s) 876; 323 U. S. 684;

Crescent Express Lines v. U. S. 49 F. (s) 92;
Truax v. Corrigan, 257 U. S. 312;
U. S. v. Louisiana & P. R. Co., 234 U. S. 1.
In point, U. S. v. Seatrain, 329 U. S. 424, affirming 64 F. (s) 156.
Oakley C. Curtis, 4 F. (2) 979;
Boulevard Transit Lines v. U. S., 77 F. (s) 594;
Sec. 212 (a) of the Act, 49 U. S. C.
54 Stat. 899, Act 1940, Consolidated Lines, Railway and motor.

In I. C. C. v. Parker, 326 U. S. 60, the contest was between the Commission and motor carrier Parker, growing out of the Commission having given to Willett certain motor carrier privileges along the line of the Pennsylvania Lines in Ohio, Indiana and Illinois.

Mr. Justice Reed pointed out, for the court, the necessity for the certificates to Parker and explained that this necessity arose out of the desire "to have a common management of Railroad and trucks, for better cooperation than would be obtained by arms-length contracts, or, agreements."

The evidence in that case showed there were operating truck lines which individually could serve all the way-stations. He also said that, "We think that it was for
267 a motor service to improve an existing rail service, and that the Commission had authority and administrative discretion to order the certificates to issue."

In a succeeding paragraph the Justice pointed out a necessity for closer cooperation between the rail carriers and the motor carriers. Pages 68-70.

At page 71 his reasoning goes further and at the top of page 72 it is fully harvested.

He also declares on page 73, "*There is no prohibition as to a railway acquiring truck lines in terms,* and such implication is negatived by the discretion to grant certificates conferred on the Commission by the Act."

Mr. Justice Douglas, in his dissenting opinion in which Justices Black and Rutledge joined, make this position of the court so clear that one cannot escape.

Now, the very simple academic thought arises, what, in view of the reasoning of the Supreme Court, in the case just spoken of, does "auxiliary and supplemental to," continually used by the Commission in the present case, mean? And, by what authority does the Commission read it into the certificates issued to the plaintiff?

The reasoning of the court in the Parker case shows that the very action of the Commission, under the Act, was for

the purpose of being "supplemental and auxiliary" of the railroad carrier.

268 The facts here show that the railroad carrier owns all the stock in Transport, and, with that ownership, we must concede, engineered the ultimate securing of the complete 1150 miles covered by Transport, which, nearly all of the way, was, "auxiliary to and supplemental of" the Railroad transportation. Transport's line went into New Mexico, as a feeder for the same system.

The dictionary defines "auxiliary," to mean, "helping or aiding; giving support; subsidiary or additional supplementary power. A helper or aid; a confederate; an ally as in war."

Almost as simple, is the definition of the word, "supplemental," which is, "additional; or, have the nature of or forming a supplement"; as, "he had come upon supplementary sources of income."

We, therefore, find that Transport was "auxiliary to and supplemental" of Railway. That is why Railway assisted in its creation. That is why Railway put up the money to buy the stock and to get it in working order.

That leaves two questions:

(a) Is such action monopolizing?

If so, that question was for the determination of the Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. That question was not for the court. It could not be a question for the Commission.

269 (b) The last question is whether, after having permitted the acquisition of these certificates, the Commission may issue orders which stifle, and, in reality, destroy the value of such certificates. No one learned in the law could permit an affirmative answer to that question. It is taking of private property without due process. It is confiscation. It is destruction. It is arbitrary.

Glancing once more at the provisions of the statute, we find that Sec. 203 (a)(14), defines common carrier by motor vehicle. The attempt by the Commission to restrict the term, "motor carrier," would be an usurpation of power. So, also, there may be no lawful restriction of rates. Neither does Sec. 208 (a), while broad, permit a modification of a separate provision of the Act itself. It has been said that Sec. 208 (a) means that the Commission shall preserve substantial parity between future and past operations. A valid

grant cannot be effected by the addition of an invalid condi
tion.

In truth, conditions and limitations granted under Sec
208 (a) must be reasonable, and they must be required by
public convenience and necessity, or, for the purpose o
carrying out the requirements established under Sec. 20-
(a) (1) and (6). Conditions must conform to the
270 requirements of Sec. 208, itself, and must be con
sistent with and fall within the specific statutes ap
plicable to common motor carriers. Thus, while the Com
mission might prescribe the points to be served, it coul
not forbid the participation in joint rates and through route
for the simple reason that such a provision would be in
consistent with the wording of Sec. 216 of the Act.

Nor can revocation be accomplished in any way excep
under Sec. 212. It cannot be brought about by the im
position of terms and conditions, or, limitations. The Com
mission, itself, said in Quaker City Bus Co. v. Black Hawk
Lines, Inc., that, "The existence of a certificate creates
vested motor carrier status which stays in force and effec
• • • until that certificate is revoked in accordance with the
procedure prescribed in Sec. 212 (a)."

If we give the Commission power to revoke by terms
limitations and conditions, by an attempted stretch of Sec
208 (a), then we make Sec. 212 (a) utterly useless. Each
Section has its purpose. Each Section expresses the inten
of the Congress. Such intent must govern.

The permanent injunction will issue as prayed, and
judgment in accordance will be drawn and forwarded fo
signatures.

DONE at Dallas, Texas, this the 11th day of November
1949.

271 United States District Court
Dallas 1, Texas

Chambers of
Judge William Hawley Atwell

Wichita Falls, Texas,
November 23rd, 1949.

Mr. J. T. Suggs,
General Counsel, Texas & Pacific Ry. Co.,
Dallas, Texas.

Dear Mr. Suggs:

I have carefully gone over the suggestions with refer
ence to alleged typographical errors contained in you

recent memorandum, which memorandum I am retaining, attached to your letter.

I find that the corrections should be made and direct that you file the enclosed corrected opinion in this matter, with the Clerk of the court, together with a copy of this letter, so the Clerk will know it is all right to file it.

In an opinion of this length little errors will creep in, and I am glad they were discovered so we all may be correct.

If you have no other copy, than the one you forwarded me, of the opinion, you may lift the copy heretofore filed in the Clerk's office and put the one which is herewith returned, since it corrects the typographical errors.

With kind regards, I am

Yours very earnestly,

WM. H. ATWELL
United States District Judge.

CC—Clerk—Dallas
U. S. Attorney, Dallas.

COPY

272 In the District Court of the United States
For the Northern District of Texas,
Dallas Division

No. 3696—Civil.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
vs.
UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPLICATION TO ENJOIN INTERSTATE COMMERCE COMMISSION'S ORDER.

I dissent
s/BEN C. DAWKINS

J. T. Suggs, D. L. Case, Robert Thompson, William R. McDowell, John C. Robertson, J. L. Lancaster, Jr., W. O. Reed, Claude Williams, all of Dallas, Texas, for the Petitioner;

H. L. Underwood, Assistant Chief Counsel Interstate Commerce Commission, Daniel W. Knowlton Chief Counsel, Interstate Commerce Commission, Washington, D. C., Frank B. Potter, United States Attorney, Fort Worth, Texas, O. M. Harrell, Assistant United States Attorney, Dallas, Texas, for the United States;

E. J. Hickey, Jr., Washington, D. C., Harmon L. Watkins, Dallas, Texas, of counsel, Mulholland, Robie, McEwen & Hickey, Washington, D. C., for Railway Labor Executives Assn., Intervenor, Callaway & Reed, Dallas, Texas, for Regular Common Carrier Conference of the American Trucking Associations, Inc., Intervenor.

William D. McFarlane, Special Assistant to the Attorney General.

Herbert A. Bergson, Assistant Attorney General.

Frederick R. Hanlon, Special Attorney, Dept. of Justice, Washington, D. C.

James E. Kilday, Special Assistant to the Attorney General.

273 Before Circuit Judge Holmes and District Judges Dawkins and Atwell.

Amended Opinion—Filed Nov. 25, 1949

Atwell, District Judge.

The petitioner, hereafter known as "Transport," is a corporation with its stock wholly owned by the Texas and Pacific Railway Company.

The Texas and Pacific Railway Company, hereinafter designated, "Railway," is a corporation created by virtue of an Act of Congress.

Transport is authorized to engage in the business of a common carrier by motor vehicle, or, by any means whatsoever, and partly by one means and partly by another, and by arrangement, or, contract with other common carriers. It may lease, contract with, or, otherwise deal in truck, bus, state, or, other transportation systems.

It has carried on this business for many years, subject to the provisions of the Interstate Commerce Commission Act. Such activity has been both interstate and intrastate, in the states of Texas, Louisiana, and New Mexico. Its intrastate business has been under common carriers' certificates issued by the respective states of Texas and Louisiana. It does not operate intrastate in the state of New Mexico. It has engaged in interstate business in Texas, New Mexico and Louisiana under certificates acquired by purchase and original application which were issued by the Interstate Commerce Commission, from time to time.

274 After the acquisition of authorization to so engage, it invested large sums of money therein. It claims that the cost of certificates authorized by the Commission, amounted to $96,674.18. That in addition to this

cost, it has invested heavily in equipment, and transportation facilities for the proper maintenance and prosecution of this business to the extent of $270,257.80. That it is earning gross revenues in interstate transportation in the approximate sum of $20,000 per month, and approximately $150,000 per month from intrastate operation.

That the purpose of its organization, in 1929, was to haul less-than-carload freight shipments, known in its petition as "merchandise traffic," to, from and between stations on the line of Railway. That its schedule of rates on such traffic between such local stations was the same as that maintained by Railway, and in that year it published station-to-station rates on said merchandise, which were served by Railway, corresponding to those of motor carriers, which rates included pick-up and delivery service. It issued bills of lading in its own name, but the transportation, except for local pick-up and delivery service was performed by Railway under arrangements between it and Transport.

In November, 1935, Transport negotiated common carrier-over-road operations between Monahans, Texas and Lovington, New Mexico.

1937

In / ~~1935~~ it secured authority from the Commission to purchase certificates of convenience and necessity
275 from other common motor carriers, which had been established prior to the Motor Carrier Act of 1935, and commonly known as "grandfather rights."

se

It ~~also~~ purchased the / ~~same sort of~~ rights from W. A. Johnson, Johnson Motor Lines, and the Forth Worth Warehouse and Storage Company. These all related to motor carriers along the line between Dallas and Abilene and Big Spring, Texas.

1938

In / ~~1937~~ it purchased from the Southern Transportation Company

/ ~~Lines~~ common carrier and grandfather rights between Dallas and Wills Point, and Gladewater, Texas and Shreveport, Louisiana. That along the routes on these certificates are such important distribution centers, shipping points, designations and gateways as Dallas, Fort Worth, Abilene, Sweetwater and Big Spring, Texas and Shreveport, Louisiana. That all of the interstate traffic handled by Transport either originates in or terminates on, or, moves over such routes. These certificates were validly issued under Sec.

207 of the Motor Carrier Act of 1935 and Part 2 of the Interstate Commerce Commission Act of 1940. Sec. 206 and Sec. 213 of the Motor Carrier Act of 1935 which later became Part 2 of the Interstate Commerce Act of 1940.

That such original and purchased certificates had no such conditions attached to them by the Commission as the Commission determined in its orders of January 22, 1948, and May 2, 1949. Such orders, Transport claims, ingraft on the certificates which it owns, certain conditions which destroy, or, materially diminish the common carrier character of such rights and constitutes a taking of private prop-
276 erty for a public purpose without just compensation contrary to the 5th Amendment.

It also claims that it had no notice of a hearing, such as is required, for such action, and, that no appropriate testimony was had by the Commission to substantiate its findings. That it will suffer irreparable damage if such orders are not restrained and that its loss will be approximately $240,000 per year, and, in addition, would deprive Transport of the value of its investments in the certificates aggregating $96,674.18, as well as of its physical property devoted to interstate transportation in the sum of $25,000. That its business in 1948 accorded it a net operating profit, before taxes, of $118,808.06, and a net profit of $69,959.41.

It denies that it has any complete remedy at law which is speedy and adequate. It asks for temporary restraint and for the impanelling of a three-judge court, and, a permanent injunction.

Attached to the petition are informative schedules, "A", "B" and "C". "A" being a report of hearings; "B" sharing certificates and "C", showing a map of Transport's and Railway's system.

The answer of the Commission concedes jurisdiction and admits the purpose of the suit. It admits the acquisition of the certificates, and that Transport has conducted opera-
tions in interstate commerce by virtue of the same,
277 but, it contends that the certificates contained restrictions in respect "to operations or other matters." It does not answer as to operations by Transport before Motor Carrier Act. It denies that the certificates purchased granted "grandfather rights," and claims that they were limited to operations "auxiliary to, or, supplementary of, rail carrier service." It admits the orders and reports pleaded, and that they are the best evidence of its findings, conclusions and requirements. It denies that any such orders, or, requirements are arbitrary, or, the reversal

of former policy with respect to the operation authority granted to Transport. It denies that such orders are unlawful. It denies that Transport will suffer irreparable damage unless its orders of January 22, 1948 and May 9th, 1949, are set aside.

The answer, therefore, makes an issue, upon which testimony was considered appropriate, with reference to investment; carrying on the business before Motor Carrier Act; as to whether the certificates were conditioned "auxiliary to, or, supplemental of said carrier services;" damages, notice of hearing and a proper hearing.

Upon these controverted issues the testimony discloses that the allegations as to the controverted issues, made in the petitioner's complaint, are entirely supported by the testimony.

As to a hearing there appear cross currents in 302 U. S. 388, spoken of a little later, and, 331 U. S. 334-336, cited by Railway, as to the inability of this court to have a
278 hearing on this question. 331 U. S. treated only the rate, not the question of a hearing in the constitutional sense.

The defendant, in some of the exhibits, and in its own pleadings, and particularly in its report on the "further hearing by Div. 5," seems to think, and so expressed the thought that Transport's line of service, though justly and reasonably and legally authorized by both state and nation, was too long, and that it made one system. We may appropriately ask, may such a line, 1150 miles long, validly acquired from time to time, be summarily broken into parts, and its independence destroyed? Does the Act justify such destruction?

The wisdom of Congress is displayed in the addition to the Motor Carrier Act which permitted such a service to be organized by and for the service of the Railroad. The main purpose of the supervision by Commission is to save the shipping public from the charge of exorbitant rates, and the nuisance of a monopolizing combination.

The rates charged and filed by Transport were in complete accord with other motor carriers. Highly satisfactory to such shippers and receivers of freight as are represented by the Chambers of Commerce in Dallas and Fort Worth as evidenced by their respective spokesmen.

This is not to say that the granting of a certificate places the holder thereof beyond the power of the Commission to supervise and to continue to inspect its service. But,
279 it is to say that the holder of the certificate must be

recognized as the holder of property and that such property may not be taken from it without due process and with an arbitrary or unreasonable motive.

The Supreme Court in Railroad Commission v. Pacific Gas Co., 302 U. S. 388, treated this question at considerable length, and stated that the utility had the right to a fair and open hearing, as one of the rudiments of fair play assured to every litigant by the Federal Constitution.

If rates, said the court in that case, are confiscatory, then the jurisdiction of the Commission is at once appropriately invoked. Courts do not have a right to question the correctness of the method, or, reasoning adopted by a regulating agency, but the court does have a right to determine whether, or, not the rate will result in confiscation.

The soul of the controversy here is the result that the order has. There is no debate here over the question of inappropriate charges, or, tariff rates, or, combinations, or, monopolies. The question here is *the breaking up of a system that has been validly acquired, for a legal purpose, and which will result in confiscation, and, irreparable damage to the complaining carrier.*

There are countless other decisions impinging upon the theories that are involved in this interesting controversy, such as:

280 I. C. C. v. Parker, 326 U. S. 60;
U. S. v. Detroit Navigation Co., 326 U. S. 236;
New York v. United States, 331 U. S. 334;
C & O vs. U. S., 283 U. S. 35;
U. S. vs. Pierce Auto Lines, 327 U. S. 515;
I. C. C. vs. Illinois Central, 215 U. S. 452;
U. S. vs. Caroline Freight, 315 U. S. 475;
Crichton vs. U. S., 56 F. (s) 876; 323 U. S. 684;
Crescent Express Lines v. U. S., 49 F. (s) 92;
Truax vs. Corrigan, 257 U. S. 312;
U. S. Louisiana & P. R. Co., 234 U. S. 1;
In point, U. S. v. Seastrain, 329 U. S. 424, affirming 64 F. (s) 156
Oakley C. Curtis, 4 F. (2) 979;
Boulevard Transit Lines v. U. S., 77 F. (s) 594;
Sec. 212 (a) of the Act, 49 U. S. C.,
54 Stat. 899, Act 1940, Consolidated Lines, Railway and motor.

In I. C. C. v. Parker, 326 U. S. 60, the contest was between the Commission and motor carrier Parker, growing out of the Commission having given to Willett certain motor car-

rier privileges along the line of the Pennsylvania Lines in Ohio, Indiana and Illinois.

Mr. Justice Reed pointed out, for the court, the necessity for the certificates to Parker and explained that this necessity arose out of the desire "to have a common management of Railroad and trucks, for better cooperation than would be obtained by arms-length contracts, or, agreements."

The evidence in that case showed there were operating truck lines which individually could serve all the way-
stations. He also said that, "We think that it was
281 for a motor service to improve an existing rail service, and that the Commission had authority and administrative discretion to order the certificates to issue."

In a succeeding paragraph the Justice pointed out a necessity for closer cooperation between the rail carriers and the motor carriers. Pages 68-70.

At page 71 his reasoning goes further and at the top of page 72 it is fully harvested.

He also declares on page 73, "*There is no prohibition as to a railway acquiring truck lines in terms,* and such implication is negatived by the discretion to grant certificates conferred on the Commission by the Act."

Mr. Justice Douglas, in his dissenting opinion in which Justices Black and Rutledge joined, make this position of the court so clear that one cannot escape.

Now, the very simple academic thought arises, what, in view of the reasoning of the Supreme Court, in the case just spoken of, does "auxiliary and supplemental to," continually used by the Commission in the present case, mean? And, by what authority does the Commission read it into the certificates issued to the plaintiff?

The reasoning of the court in the Parker case shows that the very action of the Commission, under the Act, was for the purpose of being "supplemental and auxiliary", of the
railroad carrier.
282 The facts here show that the railroad carrier owns all the stock in Transport, and, with that ownership, we must concede, engineered the ultimate securing of the complete 1150 miles covered by Transport, which, nearly all of the way, was "auxiliary to and supplemental of" the Railroad transportation. Transport's line went into New Mexico, as a feeder for the same system.

The dictionary defines "auxiliary," to mean, "helping or aiding; giving support; subsidiary or additional supplementary power. A helper or aid; a confederate; an ally as in war."

Almost as simple, is the definition of the word, "supplemental," which is, "additional; or, have the nature of or forming a supplement"; as, "he had come upon supplementary sources of income."

We, therefore, find that Transport was "auxiliary to and supplemental" of Railway. That is why Railway assisted in its creation. That is why Railway put up the money to buy the stock and to get it in working order.

That leaves two questions:

(a) Is such action monopolizing?

If so, determination of that question was provided for by Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. It required the Commission to determine the question before authorizing such consolidation or purchase, and in this case the Commission did determine the question in the negative and authorized the purchases here involved.

283 (b) The last question is whether, after having permitted the acquisition of these certificates, the Commission may issue orders which stifle, and, in reality, destroy the value of such certificates. No one learned in the law could permit an affirmative answer to that question. It is a taking of private property without due process. It is confiscation. It is destruction.

Glancing once more at the provisions of the statute, we find that Sec. 203 (a) (14), defines common carrier by motor vehicle. The attempt by the Commission to restrict the term, "common carrier," would be an usurpation of power. So, also, there may be no lawful restriction of rates. Neither does Sec. 208 (a) while broad, permit a modification of a separate provision of the Act itself. It has been said that Sec. 206 (a) means that the Commission shall preserve substantial parity between future and past operations. A valid grant cannot be affected by the addition of an invalid condition.

In truth, conditions and limitations granted under Sec. 208 (a) must be reasonable, and they must be required by public convenience and necessity, or, for the purpose of carrying out the requirements established under Sec. 204 (a) (1) and (6). Conditions must conform to the

284 requirements of Sec. 208, itself, and must be consistent with and fall within the specific statutes applicable to common motor carriers. Thus, while the Commission might prescribe the points to be served, it could

not forbid the participation in joint rates and through routes for the simple reason that such a provision would be inconsistent with the wording of Sec. 216 of the Act.

Nor can revocation be accomplished in any way except under Sec. 212. It cannot be brought about by the imposition of terms and conditions, or, limitations. The Commission, itself, said in Quaker City Bus Co. v. Black Hawk Lines, Inc., that, "The existence of a certificate creates a vested motor carrier status which says in force and effect * * * until the certificate is revoked in accordance with the procedure prescribed in Sec. 212 (a)."

If we give the Commission power to revoke by terms, limitations and conditions, by an attempted stretch of Sec. 208 (a), then we make Sec. 212 (a) utterly useless. Each Section has its purpose. Each Section expresses the intent of the Congress. Such intent must govern.

The permanent injunction will issue as prayed, and a judgment in accordance will be drawn and forwarded for signatures.

Done at Dallas, Texas, this the 11th day of November, 1949.

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In the
District Court of the United States
for the
Northern District of Texas
Dallas Division

Civil No. 3696

The Texas and Pacific Motor Transport Company,
PETITIONER,
v.
The United States of America and Interstate Commerce Commission, DEFENDANTS.

Judgment—Filed Dec. 14, 1949

On the 11th day of November, 1949, the above entitled and numbered cause came on for trial on petitioner's prayer for a permanent injunction against the defendants, United States of America and Interstate Commerce Commission, to enjoin, set aside, annul and suspend those certain orders of the Interstate Commerce Commission dated January 22, 1948 and May 9, 1949, issued in its proceedings entitled "The Texas and Pacific Motor Transport Company, Common Carrier Application" and bearing its docket No. MC-50544 (including Sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9,

10, 11, 12, 14, 19 and 22). The cause came on before this statutory three-judge District Court composed of the Honorable Edwin R. Holmes, Circuit Judge, the Honorable Benjamin C. Dawkins, District Judge, and the Honorable Wm. H. Atwell, District Judge, duly constitued and assembled in accordance with the requirements of statute. The
286 defendants having been served with process as provided by law and having entered their appearance herein, and the parties having stipulated in writing that the trial on such date would be on petitioner's prayer for permanent relief and that the order entered thereon would be the final judgment of the Court, came the petitioner and the defendants and intervenors and each of them by and through their attorneys, respectively. Each of the members of the three-judge Court being present and having read the pleadings of the parties and having heard the evidence and the argument of counsel, a written opinion making findings of fact and conclusions of law was prepared by the Honorable Wm. H. Atwell, in which he was joined by the Honorable Edwin R. Holmes, the Honorable Benjamin C. Dawkins, dissenting, and such opinion was entered as the opinion of the majority of the Court. Additional findings of fact and conclusions of law supplementing those made in the Court's opinion having been made and entered, upon such findings of fact and conclusions of law it is hereby ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The written opinion of the majority of the Court and the supplemental findings of fact and conclusions of law shall be and they are hereby together made the findings of fact and the conclusions of law required by the rules of procedure.

2. That the orders of January 22, 1948, of the Interstate Commerce Commission, by Division 5, and of May 9, 1949, by the entire Commission, in the Commission docketed and entitled "No. MC-50544 (including Sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22) The Texas and Pacific Motor Transport Company Common Carrier Application," be, and they are hereby permanently enjoined, set aside, annulled and suspended insofar as said orders impose on petitioner's existing certificates of public convenience and necessity any conditions which were not attached to said certificates on issuance, and insofar as said orders preclude petitioner from:

a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;
b. Interchanging traffic with other common carrier motor carriers on joint motor rates;
c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;

287 b. Interchanging traffic with other common carrier certificates of public convenience and necessity issued in Interstate Commerce Commission Docket MC-50544 and Sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 19 and 22, between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Texarkana, Tex.-Ark., Fort Worth, Dallas, Abilene and Monahans, Texas;

and insofar as said orders confine petitioner to utilization of railroad rates.

3. That the defendants United States of America and Interstate Commerce Commission be and they are hereby permanently enjoined from imposing any of the conditions prescribed in its order of January 22, 1948 on any of petitioner's existing certificates of public convenience and necessity not so restricted on issuance and from interpreting or enforcing said orders of January 22, 1948 and May 9, 1949 and the conditions imposed on petitioner's certificates in such manner as will prohibit petitioner from:

a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;
b. Interchanging traffic with other common carrier motor carriers on joint motor rates;
c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;
d. Transporting traffic to, through, from or between any so-called "key points" on that part of its

288 route covered by interstate certificates of public convenience and necessity, to which no "key point" restriction attached on issuance of such certificates,

or in such manner as will restrict petitioner to ship on rail rates or on railroad bills of lading.

4. That petitioner do have and recover of and from defendants costs of this action and have execution therefor.

Dated at Dallas this 14th day of December, 1949.

EDWIN R. HOLMES
Circuit Judge

WM. H. ATWELL
District Judge

I dissent—
BEN. C. DAWKINS
District Judge.

Approved as to form:

WILLIAM D. MCFARLANE
Special Assistant to the Attorney General

ALLEN CRENSHAW
Assistant Chief Counsel
Interstate Commerce Commission

J. T. SUGGS
Attorney for Petitioner

289 In United States District Court

Petition for Appeal—Filed Feb. 10, 1950

The United States of America and Interstate Commerce Commission, defendants in the above-entitled cause feeling themselves aggrieved by the final decree and order of this Court entered on December 14, 1949, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition, to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and said papers on which said decree was made and entered, duly authenticated, be transmitted to the Supreme Court of the United States under the rules of said Court.

Dated February 9th, 1950.

HERBERT A. BERGSON
Herbert A. Bergson
Assistant Attorney General

290 JAMES E. KILDAY
James E. Kilday
Special Assistant to the Attorney General

WILLIAM D. MCFARLANE
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FREDERICK R. HANLON
Frederick R. Hanlon
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FRANK B. POTTER
Frank Potter
United States Attorney
For the United States of America.

DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel

ALLEN CRENSHAW
Allen Crenshaw
Assistant Chief Counsel
For the Interstate Commerce Commission

291 In United States District Court

Order Allowing Appeal—Filed Feb. 10, 1950

In the above-entitled cause the United States of America and the Interstate Commerce Commission, defendants, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on December 14, 1949, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules in such case made and provided:

IT IS ORDERED AND DECREED, that the appeal be and the same is hereby allowed as prayed for.

Dated February 10, 1950.

WM H. ATWELL
United States District Judge

292 In United States District Court

Citation on Appeal—Filed Feb. 10, 1950

To: The Texas and Pacific Motor Transport Company, Regular Common Carrier Conference of America Trucking Association, Railway Labor Executives' Association

Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, within forty (40) days from the date hereof, pursuant to an order allowing an appeal from the final decree made and entered in the above-entitled cause on December 14, 1949, to show cause, if any there be, why said decree rendered against defendants should not be reversed and set aside.

Dated February 10, 1950.

WM H. ATWELL
United States District Judge

293 In United States District Court

Notice of Appeal—Filed Feb. 10, 1950

To: The Texas and Pacific Motor Transport Company, Regular Common Carrier Conference of American Trucking Association, Railway Labor Executives' Association.

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, and each of them do hereby appeal to the Supreme Court of the United States from the final order and decree of the United States District Court for the Northern District of Texas, Dallas Division, made and entered on the 14th day of December, 1949, setting aside the reports and orders of the Commission of January 22, 1948, and May 9, 1949, wherein the Commission entered

orders placing certain conditions on certain of the certificates of the Texas and Pacific Motor Transport Company.

Dated February 9th, 1950.

HERBERT A. BERGSON
Herbert A. Bergson
Assistant Attorney General

294

JAMES E. KILDAY
James E. Kilday
Special Assistant to the Attorney General

WILLIAM D. McFARLANE
William D. McFarlane
Special Assistant to the Attorney General

FREDERICK R. HANLON
Frederick R. Hanlon
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FRANK B. POTTER
Frank Potter
United States Attorney
For the United States of America.

DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel

ALLEN CRENSHAW
Allen Crenshaw
Assistant Chief Counsel
For the Interstate Commerce Commission

295 In United States District Court

Assignment of Errors and Prayer for Reversal—Filed Feb. 10, 1950

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the District Court entered on December 14, 1949.

The District Court erred:

1. In holding that the Commission did not have authority under Sections 5, 206, 207, and 208 of the Interstate Com-

merce Act to impose specific conditions confining plaintiff to motor service which was supplemental and auxiliary to rail service by the supplementary proceedings involved here.

2. In holding and concluding that the condition on the original certificates that the authority granted shall be subject to such further limitations, restrictions, or modifications as may be found necessary in order to insure
296 that the service shall be auxiliary or supplemental to train service, would not be adequate authority for placing the later, more specific, conditions on the certificates here involved.

3. In failing to hold and conclude that the condition forbidding to plaintiff the right to perform service under "all-motor" local and "all-motor" joint rates with connecting motor carriers was merely a redefinition of the authority originally granted and was an expression of the consistent policy of the Commission in respect to railroad-owned motor carriers.

4. In holding and concluding that the placing of the conditions on the certificates in question amounted to revocation in whole or in part of said certificates.

5. In holding and concluding that plaintiff's operation is and has been auxiliary or supplemental to train service within the definition expressed by the Commission and as understood by the plaintiff.

6. In holding and concluding that although the findings required by Section 213 of the Motor Carrier Act of 1935 and its re-enacted provisions in Section 5(2)(a) and (b) of the Interstate Commerce Act were appropriately made in the Commission's reports and orders granting said certificates, that nevertheless such action represented finality of action on the part of the Commission.

7. In failing to hold and conclude that by the express terms of the original grants the Commission reserved the right to impose additional conditions in order to restrict the plaintiff to a service supplemental to and auxiliary of the rail service, and that the later conditions so imposed did no more than restrict plaintiff to that type of service originally intended.

8. In holding and concluding that the restrictions imposed on plaintiff's certificates are repugnant to the express terms of the statute, Section 203(a) (14).

9. In holding and concluding that the operations of the railroad-owned motor carrier involved here must be

297 the same as that of a regular common carrier by motor vehicle and cannot be restricted to the type of service intended by Section 5(2).(a) and (b) of the Act, namely a coordinated motor-rail service which would "enable such carrier [the railroad] to use service by motor vehicle to public advantage *in its* [the railroad's] *operations*" (emphasis supplied), said service being the type to be authorized to railroad-owned motor carriers as is made manifest by Sections 5(2)(a) and (b) of the Act and the legislative history thereof.

10. In failing to hold and conclude that Section 5(2) of the Interstate Commerce Act requires that motor carriers acquired by rail carriers be confined to operations which are auxiliary to and supplemental of rail service, and not compete unduly with the rail carrier or other motor carriers.

11. In failing to hold and conclude that Section 5(2)(a) and (b) (formerly Section 213) by its express terms and the legislative history thereof require that railroad-owned motor carriers be regulated by the Commission so that the control of motor carriers does not get into the hands of other competing forms of transportation.

12. In holding and concluding that complete rights had become vested in plaintiff and that said rights could not be delimited except in a proceeding under Section 212 of the Act.

13. In failing to hold and conclude that complete rights were not granted by the original certificates but in accordance with the mandate of Congress as specified in the Act and in the National Transportation Policy were limited to a coordinated service which was supplemental to and auxiliary of the rail service.

14. In holding and concluding that the Commission exceeded its statutory powers.

15. In failing to hold and conclude that there was ample justification for the Commission's exercise of its administrative processes and that said authority may be
298 found in the Interstate Commerce Act, the legislative history thereof, and the National Transportation Policy.

16. In holding and concluding that the Commission's action in its reports and orders of January 22, 1948, and May 9, 1949, unlawfully and in violation of the Fifth Amendment of the Constitution of the United States revoked a substantial portion of plaintiff's certificates and operating author-

ities and thereby would destroy or materially impair the value thereof.

17. In holding and concluding that testimony was admissible with reference to investment, the carrying on of business before the Motor Carrier Act, whether the certificates were conditioned so as to be auxiliary to, or, supplemental of said carrier services, damages, notice of hearing, and proper hearing.

18. In failing to hold and conclude that this was not a trial *de novo* but was a judicial review proceeding and as such the evidence was restricted to the record made before the Commission and that therefore no evidence was admissible to nullify the orders of the Commission which had not first been presented to that expert body on transportation questions for determination.

19. In overruling the objections of the United States of America to the admission of evidence or testimony which had not been first presented to the Commission for determination of its validity and substantiality.

20. In holding and concluding that the Interstate Commerce Commission is without authority to make the orders here in question, in undertaking to substitute its judgment for that of the Interstate Commerce Commission with respect to transportation questions confided by law to the Interstate Commerce Commission, in failing to accept findings of the Interstate Commerce Commission which were amply supported by evidence, and in failing to hold that the orders of the Interstate Commerce Commission dated January 22, 1948 and May 9, 1949, are in all respects valid and lawful.

299 21. In setting aside, annulling, and permanently enjoining the orders of the Interstate Commerce Commission entered respectively on January 22, 1948 and May 9, 1949.

WHEREFORE, defendants, United States of America and Interstate Commerce Commission, pray that the final decree of the District Court be reversed to the extent that it may be inconsistent with the errors herein assigned, and for such other orders as the Court may deem fit and proper.

HERBERT A. BERGSON
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Assistant Attorney General

JAMES E. KILDAY
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Special Assistant to the Attorney General

WILLIAM D. MCFARLANE
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FREDERICK R. HANLON
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DANIEL W. KNOWLTON
Daniel W. Knowlton
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ALLEN CRENSHAW
Allen Crenshaw
Assistant Chief Counsel
For the Interstate Commerce Commission

350 In United States District Court

Praecipe for Transcript of Record—
Filed Feb. 10, 1950

To the Clerk of the Above-Named Court:

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint with Exhibits A-C inclusive.
2. Answer of the United States of America.
3. Answer of the Interstate Commerce Commission.
4. Answer of Regular Common Carrier Conference of American Trucking Associations, Inc.
5. Answer of Intervening Defendant, Railway Labor Executives' Association.
6. Stipulation of the Parties that the Hearing on November 11, 1949 shall be the Final Hearing on Petitioner's Prayer for Permanent Injunctive Relief.
7. Petitioner's Request for Admissions under Rule 36.
8. Answer of United States to Petitioner's Request for Admissions under Rule 36.

351 9. Answer of Interstate Commerce Commission to Petitioner's Request for Admissions under Rule 36.

10. Motion for Leave to Intervene of Regular Common Carrier Conference of American Trucking Associations, Inc.
11. Motion for Leave to Intervene of Railway Labor Executives' Association.
12. Order Granting Regular Common Carrier Conference of American Trucking Associations, Inc. Leave to Intervene.
13. Order Granting Railway Labor Executives' Association Leave to Intervene.
14. Oral Argument Before the Three-Judge Court in Dallas, Texas, on November 11, 1949.
15. Minutes of Hearing Held Before the Three-Judge Court in Dallas, Texas, on November 11, 1949.
16. Exhibit Containing the Record Before the Interstate Commerce Commission in Docket MC-50544 and various sub-numbers which was presented to the Court in Civil Action No. 3696.
17. Plaintiff's Suggested Findings of Fact and Conclusions of Law.
18. Defendants' Objections to Plaintiff's Suggested Findings of Fact and Conclusions of Law.
19. Defendants' Suggested Findings of Fact and Conclusions of Law.
20. Motion by Regular Common Carrier Conference of American Trucking Associations, Inc. to Allow the Filing of a Motion to have the Court make Additional Findings of Fact.
21. Motion for Additional Findings of Fact.
22. Original Opinion of the District Court filed on November 16, 1949.
23. Amended Opinion of the District Court filed on November 25, 1949.
24. Findings of Fact, Conclusions of Law and Final Decree as entered by the Court in Civil Action No. 3696.
25. Petition for Appeal.
26. Order Allowing Appeal.
27. Citation on Appeal.
28. Notice of Appeal.
29. Assignment of Errors.
30. Statement of Jurisdiction of the Supreme Court of the United States.
31. Statement of Defendants-appellants Directing Attention to Paragraph 3 of Rule 12 of Revised Rules of the Supreme Court of the United States.

352 32. Certificate of Service of Notice of Appeal.
33. This Praecipe for Transcript of Record.
34. All Docket Entries in Civil Action No. 3696.

Dated February 9th, 1950.

HERBERT A. BERGSON
Herbert A. Bergson
Assistant Attorney General

JAMES E. KILDAY
James E. Kilday
Special Assistant to the Attorney General

WILLIAM D. MCFARLANE
William D. McFarlane
Special Assistant to the Attorney General

FREDERICK R. HANLON
Frederick R. Hanlon
Special Attorney

FRANK B. POTTER
Frank Potter
United States Attorney
For the United States of America

DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel

ALLEN CRENSHAW
Allen Crenshaw
Assistant Chief Counsel

353 In United States District Court

No. 3696 Civil

THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY,
PLAINTIFF
vs.
THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Docket Entries

1949.
July 14. Filing Complaint.
Issue Summons.
July 16. Summons to United States and Interstate Commerce Commission returned executed July 14.

1949, by serving Frank B. Potter, U. S. Atty. and Attorney General and Interstate Commerce Commission by Registered Mail.

Filing designation of Hon. Edwin R. Holmes, U. S. Circuit Court Judge; Hon. Benjamin C. Dawkins, U. S. District Judge for the Western District of La. to serve with Judge Atwell (Joseph C. Hutcheson).

July 21. Filing motion to serve request for admissions under Rule 36.

Filing request for admissions under Rule 36.

Filing Notice.

July 25. Enter order on request for admissions under Rule 36. Nos. 1, 2 & 11 denied, Nos. 3, 4, 5, 6, 7, 8, 9, 10 & 12 granted.

Enter order granting temporary restraining order.

Aug. 4. Filing original answer of Interstate Commerce Commission.

Filing answer of United States to petitioner's request for admissions under Rule 36.

Sept 9. Filing answer of the United States.

Sept. 12. Filing answer of Interstate Commerce Commission.

Sept. 13. Filing brief of Interstate Commerce Commission.

Enter order continuing injunction in force and setting cause Nov. 11, 1949.

Oct. 8. Filing stipulation that hearing on Nov. 11, 1949, shall be a final hearing.

Oct. 26. Filing supplemental brief, Interstate Commerce Commission.

Nov. 9. Filing motion for leave to intervene by defendant, Railway Labor Executives' Association.

Nov. 10. Enter order allowing Railway Labor Executives' Association to intervene.

Filing answer of intervening defendant, Railway Labor Executives' Association.

Nov. 11. Enter order allowing Regular Common Carrier Conference of American Trucking Association, Inc. to intervene.

Filing answer of Regular Common Carrier Conference of America Trucking Association, Inc.

Nov. 16. Filing written opinion of Court.

Entering permanent injunction against defendants.

Nov. 25. Filing corrected written opinion of the Court with attached letter from Judge Atwell, authorizing the filing.

Dec. 12 Filing objections of defendants to findings of fact and conclusions of law.

Dec. 14. Filing findings of fact and conclusions of law by U. S.

Dec. 28. Filing motion to allow filing of a motion to have the Court make additional Findings of Fact.

354 1950.

Jan. 12. Entering notation denying motion for additional findings.

Feb. 10. Filing petition for Appeal.

Filing Assignments of Error and prayer for reversal.

Filing statement as to jurisdiction.

Filing application to enjoin Interstate Commerce Commission's order.

Filing statement directing attention to paragraph 3 of Rule 12 Rev. rules of Supreme Court.

Filing Notice of Appeal by the United States.

Filing praecipe of United States.

Filing petition to have original record transmitted, etc.

Filing Certificate of service.

Filing order allowing Appeal.

Filing Citation of Appeal.

Filing order as to transcript of record.

Feb. 11. Filing petition for Appeal on behalf of Regular Common Carrier Conference of American Trucking Association, Inc., Intervener.

Filing Assignments of Error of Regular Common Carrier Conference of American Trucking Association, Inc., Intervener.

Filing statement of jurisdiction.

Feb. 13. Enter order allowing Appeal.

Filing Citation on Appeal, Regular Common Carrier Conference of American Trucking Association, Inc.

Filing Notice of Appeal, Regular Common Carrier Conference of American Trucking Association, Inc.

Filing Certification of Service.

Filing praecipe for Transcript, Regular Common Carrier Conference of American Trucking Association, Inc.

Filing Appeal Bond for costs.

Feb. 17. Filing counter praecipe by Appellee (Texas & Pacific Motor Transport Company)

Feb. 24. Filing notice of statement against jurisdiction and motion to dismiss or affirm.

Filing statement against jurisdiction—Motion to dismiss or affirm appeal and brief in support of motion to dismiss or affirm appeal. (40 copies filed)

Feb. 27. Filing Transcript of Testimony, hearing held Feb. 11, 1949.

March 13. Transcript of Appeal to the Supreme Court of the United States.

355 In United States District Court

Petition for Appeal on Behalf of Regular Common Carrier Conference of American Trucking Associations, Inc., Intervenor—Filed Feb. 11, 1950

Now comes Regular Common Carrier Conference of American Trucking Associations, Inc., intervenor in the above entitled and numbered cause, considering itself aggrieved by the final judgment and decree of the said Court, made and entered in the above entitled and numbered cause on the 14th day of December 1949, does hereby petition the Honorable Court for an appeal to the Supreme Court of the United States from said final judgment and decree, the reasons for which are set forth in the Assignments of Error which are filed herewith, reference to which is hereby made, and prays that its appeal may be allowed, and for an order fixing the amount of the appeal bond to be filed by this intervenor for such appeal.

It further prays that a transcript of the record, proceedings and papers upon which said final judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

Dated this 11 day of February, 1950.

Respectfully submitted,

FRANK C. BROOKS
Frank C. Brooks
Attorney for Regular Common Carrier Conference of American Trucking Associations, Inc.
305 Empire Bank Building
Dallas 1, Texas

CALLAWAY & REED
305 Empire Bank Building
Dallas 1, Texas

356 In United States District Court

Order Allowing Appeal—Filed Feb. 13, 1950

In the above entitled cause Regular Common Carrier Conference of the American Trucking Associations, Inc., intervenor, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this court in said cause entered on December 14, 1949, and having also made and filed an assignment of error, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules in such case made and provided:

IT IS ORDERED AND DECREED, That the appeal be and the same is hereby allowed as prayed for, and appeal bond to be approved is hereby fixed at $250.00.

Dated February 13th, 1950.

WM. H. ATWELL
United States District Judge

357 In United States District Court

Citation on Appeal—Filed Feb. 13, 1950

To: (THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
(RAILWAY LABOR EXECUTIVES' ASSOCIATION
(UNITED STATES OF AMERICA
(INTERSTATE COMMERCE COMMISSION

GREETINGS:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, within forty (40) days from the date hereof, pursuant to an order allowing an appeal of Regular Common Carrier Conference of American Trucking Associations, Inc., Intervener, from the final decree made and entered in the above entitled cause on November 29, 1949, to show cause, if any there be, why said decree rendered against defendants should not be reversed and set aside.

Dated February 13th, 1950.

WM. H. ATWELL
United States District Judge

358 In United States District Court

Notice of Appeal—Filed Feb. 13, 1950

To: (The Texas and Pacific Motor Transport Company
(Railway Labor Executives' Association
(United States of America
(Interstate Commerce Commission

Please take notice that, pursuant to the statutes and rules of Court in such case made and provided, Regular Common Carrier Conference of American Trucking Associations, Inc., Intervener, in the above entitled cause, does hereby appeal to the Supreme Court of the United States from the final order and decree of the United States District Court for the Northern District of Texas, Dallas Division, made and entered on the 14th day of December, 1949, setting aside the reports and orders of the Commission of January 22, 1948 and May 9, 1949, wherein the Commission entered orders placing certain conditions on certain of the certificates of the Texas and Pacific Motor Transport Company.

Dated February 13, 1950.

Frank C. Brooks
Frank C. Brooks
Attorney for Regular Common Carrier Conference of American Trucking Associations, Inc.
305 Empire Bank Bldg.
Dallas 1, Texas

359 In United States District Court

Assignments of Error of Regular Common Carrier Conference of American Trucking Associations, Inc., Intervenor—Filed Feb. 11, 1950

Comes Now, the said Regular Common Carrier Conference of American Trucking Associations, Inc., one of the interveners in said cause, in connection with its appeal from the judgment and decree entered in this cause on the 14th day of December, 1949, by the District Court of the United States, specially constituted of three judges consisting of the Honorable Edwin R. Holmes, Circuit Judge, the Honorable Ben C. Dawkins, District Judge; and the Honorable Wm. H. Atwell, District Judge, files the following assignments of error upon which it will rely in its prosecution of the said appeal from the said judgment and decree:

The District Court erred:

1. In holding that the Commission did not have authority under Sections 5, 206, 207 and 208 of the Interstate Commerce Act to impose specific conditions confining Petitioner to motor service which was supplemental and auxiliary to rail service by the supplementary proceedings involved here.

2. In holding and concluding that the condition on the original certificates that the authority granted shall be subject to such further limitations, restrictions, or modifications as may be found necessary in order to insure that the service shall be auxiliary or supplemental to train service, would not be adequate authority for placing the later, more specific, conditions on the certificates here involved.

360 3. In failing to hold and conclude that the condition forbidding to Petitioner the right to perform service under "all-motor" local and "all-motor" joint rates with connecting motor carriers was merely a redefinition of the authority originally granted and was an expression of the consistent policy of the Commission in respect to railroad-owned motor carriers.

4. In holding and concluding that the placing of the conditions on the certificates in question amounted to revocation in whole or in part of said certificates.

5. In holding and concluding that Petitioner's operation is and has been auxiliary or supplemental to train service within the definition expressed by the Commission and as understood by the Petitioner.

6. In holding and concluding that although the findings required by Section 213 of the Motor Carrier Act of 1935 and its re enacted provisions in Section 5(2)(a) and (b) of the Interstate Commerce Act were appropriately made in the Commission's reports and orders granting said certificates, that nevertheless such action represented finality of action on the part of the Commission.

7. In failing to hold and conclude that by the express terms of the original grants the Commission reserved the right to impose additional conditions in order to restrict the Petitioner to a service supplemental to and auxiliary of the rail service, and that the later conditions so imposed did no more than restrict Petitioner to that type of service originally intended.

8. In holding and concluding that the restrictions imposed on Petitioner's certificates are repugnant to the express terms of the statute, Section 203(a) (14).

361 9. In holding and concluding that the operations of the railroad-owned motor carrier involved here must be the same as that of a regular common carrier by motor vehicle and cannot be restricted to the type of service intended by Section 5(2)(a) and (b) of the Act, namely a coördinated motor-rail service which would "enable such carrier (the railroad) to use service by motor vehicle to public advantage *in its* (the railroad's) *operations* (emphasis supplied), said service being the type to be authorized to railroad-owned motor carriers as is made manifest by Section 5(2)(a) and (b) of the Act and the legislative history thereof.

10. In failing to hold and conclude that Section 5(2) of the Interstate Commerce Act requires that motor carriers acquired by rail carriers be confined to operations which are auxiliary to and supplemental of rail service, and not compete unduly with the rail carrier or other motor carriers.

11. In failing to hold and conclude that Section 5(2)(a) and (b) (formerly Section 213) by its express terms and the legislative history thereof require that railroad-owned motor carriers be regulated by the Commission so that the control of motor carriers does not get into the hands of other competing forms of transportation.

12. In holding and concluding that complete rights had become vested in Petitioner and that said rights could not be delimited except in a proceeding under Section 212 of the Act.

13. In failing to hold and conclude that complete rights were not granted by the original certificates but in accordance with the mandate of Congress as specified in the Act and in the National Transportation Policy were limited to a coordinated service which was supplemental to and auxiliary of the rail service.

14. In holding and concluding that the Commission exceeded its statutory powers.

15. In failing to hold and conclude that there was ample justification for the Commission's exercise of its administrative processes and that said authority may be found in the Interstate Commerce Act, the legislative history thereof, and the National Transportation Policy.

16. In holding and concluding that the Commission's action in its reports and orders of January 22, 1948, and May 9, 1949, unlawfully and in violation of the Fifth Amendment of the Constitution of the United States revoked a substantial portion of Petitioner's certificates and

362 operating authorities and thereby would destroy or materially impair the value thereof.

17. In holding and concluding that testimony was admissible with reference to investment, the carrying on of business before the Motor Carrier Act, whether the certificates were conditioned so as to be auxiliary to, or supplemental of said carrier services, damages, notice of hearing, and proper hearing.

18. In failing to hold and conclude that this was not a trial *de novo* but was a judicial review proceeding and as such the evidence was restricted to the record made before the Commission and that therefore no evidence was admissible to nullify the orders of the Commission which had not first been presented to that expert body on transportation questions for determination.

19. In overruling the objections of the United States of America to the admission of evidence or testimony which had not been first presented to the Commission for determination of its validity and substantiality.

20. In holding and concluding that the Interstate Commerce Commission is without authority to make the orders here in question, in undertaking to substitute its judgment for that of the Interstate Commerce Commission with respect to transportation questions confided by law to the Interstate Commerce Commission, in failing to accept findings of the Interstate Commerce Commission which were amply supported by evidence, and in failing to hold that the orders of the Interstate Commerce Commission dated January 22, 1948 and May 9, 1949, are in all respects valid and lawful.

21. In setting aside, annulling, and permanently enjoining the orders of the Interstate Commerce Commission entered respectively on January 22, 1948, and May 9, 1949.

22. In making its Eighth Finding of Fact, as the record in this case fails to show that the issue of confiscation was properly presented to the Commission for its determination and therefore the issue was not properly before the court for judicial review.

23. In failing to make a finding as to this Intervenor's requested additional finding No. (1) as follows:

363 "The conditions set out in the Commission's order of January 22, 1948, with the exception of the restriction prohibiting shipments being transported entirely by motor vehicle between certain specified points, will not in anyway change Petitioner's physical handling of shipments tendered to it for transportation."

24. In failing to make a finding as to this Intervenor's requested additional finding No. (2) as follows:

"As The Texas and Pacific Railway Company is a party to various motor carrier tariffs, all shipments transported over through routes under joint through rates and in joint-line movement by the railroad company and motor carrier not connected with a railroad company move on motor carrier rates regardless of whether the physical handling of the shipment on the part of the railroad is accomplished in the Transport Company's truck or the Railroad Company's box cars."

25. In concluding and holding that the conditions imposed on Petitioner's certificates limiting it to carriage of shipments on rail bills of lading for specified railroads, at rail rates, and precluding it from interchanging freight with other common carrier motor carriers on through routes under joint motor rates, by the Commission's orders, are violative of the Interstate Commerce Act and particularly Section 208(a) thereof.

26. In concluding and holding that Petitioner was not accorded due process of law in the proceedings, culminating in the Commission's entry of the orders involved.

WHEREFORE, Intervenor prays that the said judgment or decree may be reversed and for such other and further relief as to the Court may seem just and proper.

DATED this 11 day of February, A. D., 1950.

Respectfully submitted.

FRANK C. BROOKS
Frank C. Brooks

Regular
Attorney for the Common Carrier Conference
of American Trucking Associations, Inc.
305 Empire Bank Bldg.
Dallas, Texas

CALLAWAY & REED
305 Empire Bank Bldg.
Dallas 1, Texas

371 Bond on appeal for $250.00, approved and filed Feb. 13, 1950, omitted in printing.

In United States District Court

372 *Praecipe for Transcript of Record*
—Filed Feb. 13, 1950

To the Clerk of the Above Named Court:

In preparing a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States please include the following:

1: Petition for Appeal of Regular Common Carrier Conference of American Trucking Associations, Inc.

2: Order Allowing Appeal of said Associations.

3: Citation on Appeal for said Associations.

4: Notice of Appeal of said Associations.

5: Assignments of Error of said Associations.

6: Statement of Jurisdiction of the United States Supreme Court made by said Associations.

7: Certificate of Service of Notice of Appeal by said Associations.

8: Appeal Bond for said Associations.

9: This Praecipe for Transcript.

Dated February 13th, 1950.

FRANK C. BROOKS
Frank C. Brooks, *Attorney,*
Regular Common Carrier Conference of
American Trucking Associations, Inc.
305 Empire Bank Building
Dallas 1, Texas

CALLAWAY & REED,
305 Empire Bank Building
Dallas 1, Texas

373 In the United States District Court
For the Northern District of
Texas

Dallas Division

Civil Action No. 3696

TEXAS & PACIFIC MOTOR TRANSPORT COMPANY
vs.
UNITED STATES OF AMERICA

Designation of Three-Judge Court
—Filed July 16, 1949

The Honorable William Hawley Atwell, United States District Judge for the Northern District of Texas, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the motion is one required by act of Congress to be heard and determined by a district court of three judges, I hereby designate the Honorable Edwin R. Holmes, United States Circuit Judge, and the Honorable Benjamin C. Dawkins, United States District Judge for the Western District of Louisiana, to serve with Judge Atwell as members of, and with him to constitute, the said court to hear and determine the action.

WITNESS MY HAND this 15th day of July, 1949.

JOSEPH C. HUTCHESON, JR.
Chief Judge, Fifth Circuit

(Injunctions—Three Judge Courts—Designation, 28 USCA sec. 2284)

374 In United States District Court

Motion to Serve Request for Admissions Under Rule 36—Filed July 21, 1949

To the Honorable Judge of said Court:

Now comes Petitioner, The Texas and Pacific Motor Transport Company, and requests permission of the Court to serve the attached Request for Admissions of Fact on the Defendants, The United States of America and Interstate Commerce Commission. Petitioner shows to the Court, as a part of this Motion, that this suit was filed on

July 14, 1949, and that this Request to Serve Request for Admissions of Fact is made within ten days of such date. That no answer has been served by the Defendants. That the necessity for the immediate service of Request for Admissions of Fact is because the matter has been set for trial on its merits for August 2, 1949, and, therefore, prompt service of Request for Admissions is necessary in order to enable the Defendants to have sufficient time in which to make answers thereto. That it is necessary in the interest of justice and to conserve time at the trial that the Defendants be required to answer the matters inquired about in the requested Admissions of Fact, on or before August 1, 1949.

WHEREFORE, premises considered, Petitioner prays that it be permitted to file the requested Admissions of Fact and serve same upon the Defendants at this time.

Respectfully submitted,

J. T. SUGGS
D. L. CASE
ROBERT THOMPSON
T & P Building
Dallas, Texas

JOHN C. ROBERTSON
CLAUDE WILLIAMS
505 Republic Bank Bldg.
Dallas 1, Texas

CLAUDE WILLIAMS
Of Counsel

374a NOTICE

The above motion will be called for hearing at 10 A. M., Monday, July 25, 1949 in the Courtroom of the United States District Court at Dallas, Texas.

CLAUDE WILLIAMS
Of Counsel for Petitioners
505 Rep. Bank Bldg.
Dallas, Texas

375 In United States District Court

Order on Motion to Serve Request for Admissions Under Rule 36—Filed July 25, 1949

On this the 25th day of July, 1949, came on to be heard by the Court the Motion of Petitioner, The Texas and Pacific Motor Transport Company, for permission to serve upon the Defendants the requested admissions of fact, attached to said motion. The Court being fully advised in the premises finds that the Petitioner's request with reference to Request for Admissions Nos. 1, 2 and 11 should be denied, and that the Motion should be sustained with reference to the remaining requests, provided, however, the Defendants not be required to serve their answers on or before August 1, 1949, as prayed for.

It is, Therefore, Ordered by the Court that Petitioner's Request to Serve Requested Admissions 1, 2 and 11 be and the same is hereby denied.

It is Further Ordered that Petitioner's Request to Serve Request for Admissions 3, 4, 5, 6, 7, 8, 9, 10 and 12 be granted, but that the Defendants have the time provided by law to file answers thereto.

Wm. H. Atwell
Judge, United States District Court
Northern District of Texas
Dallas Division

Approved as to form:
Claude Williams
Attorney for Petitioner

Frank B. Potter
U. S. Attorney, Northern District of Texas, Attorney for Defendants.

Wm. P. Fonville
Asst. U. S. Attorney

376 In United States District Court

Counter Praecipe for transcript of record —Filed Feb. 17, 1950

To the Clerk of the Above Court:

You are hereby requested, pursuant to Rule 10 of the Rules of the Supreme Court, to incorporate into the tran-

script of record, on the appeal herein, in addition to the portions of record indicated by the appellants herein by their praecipe, the following:

1. Designation of Honorable Edwin R. Holmes and Honorable Benjamin C. Dawkins to serve with Honorable William Hawley Atwell in Civil Action No. 3696.
2. Motion to serve request for admissions under Rule 36.
3. Order on motion to serve request for admissions under Rule 36.
4. Stenographer's transcript of the proceedings held before the Court in Dallas, Texas, on November 11, 1949, in Civil Action No. 3696.
5. Exhibit containing the record before the Interstate Commerce Commission in Docket No. MC 50544—General Proceedings, which was presented to the Court in Civil Action No. 3696.
6. Plaintiff's exhibits 1 through 90, inclusive, which were presented to the Court in Civil Action No. 3696.
7. This counter praecipe for transcript of record.

DATED February 17, 1950.

WM. R. MCDOWELL
Attorney for Appellee

Of Counsel
J. T. SUGGS
D. L. CASE
Texas & Pacific Building
Dallas, Texas

JOHN C. ROBERTSON
JOHN L. LANCASTER, JR.
Republic Bank Building
Dallas, Texas

377 *Notice of Filing Counter Praecipe*

To: United States of America
Interstate Commerce Commission
Regular Common Carrier Conference of American Trucking Associations, Inc.

GREETINGS:

Pursuant to Rule 10 of the Rules of the Supreme Court, we hand you a copy of appellee's counter praecipe for additional record in the above entitled cause to be prepared by the Clerk of the United States District Court for the Northern District of Texas, Dallas Division, the original of

which counter praecipe for additional record we have filed with said Clerk.

DATED February 17, 1950.

WM. R. MCDOWELL
Attorney for Appellee

Of Counsel
J. T. SUGGS
D. L. CASE
Texas & Pacific Building
Dallas, Texas

JOHN C. ROBERTSON
JOHN L. LANCASTER, JR.
Republic Bank Building
Dallas, Texas

378 *Certification of Service*

WILLIAM R. MCDOWELL, being first duly sworn, on oath deposes and says that he served appellee's counter praecipe upon the following named defendant-appellants and intervener by placing true copies thereof in envelopes properly stamped and addressed, as follows:

UNITED STATES OF AMERICA

Mr. William D. McFarlane
Special Assistant to the
Attorney General
Department of Justice
Department of Justice Building
Washington, D. C.

Mr. Frank B. Potter
United States Attorney
United States Court House
Fort Worth, Texas

INTERSTATE COMMERCE COMMISSION
Mr. H. L. Underwood
Assistant Chief Counsel
Interstate Commerce Commission
Washington 25, D. C.

REGULAR COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.
Mr. Frank Brooks
Callaway and Reed, Attorneys
305 Empire Bank Building
Dallas 1, Texas

and placing them in the United States mail at the post box located at the Texas and Pacific Building, Elm and Griffin

Streets, Dallas, Texas, before the hour of 4 o'clock P. M. on February 17, 1950.

WM. R. McDOWELL
William R. McDowell

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 17th day of February, 1950.

LURA JOHNSON
Lura Johnson
(SEAL) *Notary Public in and for Dallas County, Texas*

379 Clerk's Certificate to foregoing transcript omitted in printing.

381 Before the Interstate Commerce Commission

Petition of the Texas and Pacific Motor Transport Company for Orders Defining Its Rights Under Certain Certificates, or for Alternative Relief

To Said Honorable Commission:

NATURE OF PETITION

This petition is not voluntarily filed. It is tendered because petitioner is required by tariff officers of the Commission to seek a ruling by the Commission as a prerequisite to continued maintenance of rates. The situation is an unusual one, and so far as we know, it is unique. The facts are as follows:

THE FACTS

Several of the certificates[1] authorizing The Texas and Pacific Motor Transport Company to conduct operations as a common carrier by motor vehicle are subject to a restriction reading:

382 (3) "Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail."

[1] M. C. 50544 Sub. 1—Louisiana Routes south of Shreveport.
M. C. 50544 Sub. 2—Wills Point, Texas-Gladewater, Texas.
M. C. 50544 Sub. 3—Big Spring, Texas-Pecos, Texas.
M. C. 50544 Sub. 4—Marshall, Texas-Texarkana, Texas.

This character of certificate will be referred to as a rail haul certificate.

In Ex Parte 129, *Substituted Freight Service*, 232 I. C. C. 683, the Commission authorized the publication of directories whereby rail carriers might provide for substitution of motor for rail service and motor carriers might provide for the substitution of rail for motor service.

The Texas and Pacific Motor Transport Company, herein called Transport Company, finding it not only desirable, but absolutely necessary to substitute rail for motor service, availed itself of the authority granted by the Commission, and pursuant to *Permission R-M 2418*, established a directory authorizing the Transport Company to substitute rail service of The Texas and Pacific Railway Company for motor service between various points covered by motor routes of the Transport Company.

The function of the directory is to join the Railway Company in the rates published by the Transport Company, such a device having been authorized by the Commission in Ex Parte 129, *supra*, because it appeared that
383 such form of publication "could be devised so as to preserve the benefits of the substituted service without subjecting the carriers to undue expense or contravening the specific provisions of the act, and thus to protect the rights of competing carriers and the general public."

On the 29th day of May, 1940, the Commission, at the instance of the Bureau of Traffic, entered an order, as an amendment to *Permission R-M 2418*. This order provides, in substance, that on and after July 19, 1940, motor carriers operating under rail haul certificates would not, as to operations covered thereby, be permitted to continue publication of a directory; however, the effective date of said order has from time to time been postponed, and the Transport Company has continued publication of a directory, and pursuant thereto has continued to use the service of The Texas and Pacific Railway Company over various portions of its motor routes.

Under date of July 7, 1941, the Secretary of the Commission addressed a letter to Mr. J. D. Hughett, Publishing Agent for the Transport Company and also for substantially all southwestern motor carriers, in which letter Agent Hughett was advised that unless for good cause shown, on and after August 19, 1941, common carriers, to the extent they operate under limited certificates, could

not continue publication of a directory providing for substituted service. Said letter also advised that in showing cause why they should be permitted to continue the directory arrangement, the affected motor carriers would
384 be required to "show what steps are being taken to have their operating rights determined by the Commission."

Something in the rail haul restriction above quoted persuades tariff officials of the Commission that the Transport Company has no right to publish tariffs holding itself out to the public as a common carrier and providing for subsequent movement by railroad of freight originated or received in interchange by Transport Company. As best we can make out, their view is based upon their understanding of "what the Commission had in mind," although no language of the certificates can be cited in support of such an understanding.

Respectfully, but thoroughly, disagreeing with the opinion of tariff officials, we submit the following propositions:

NOTHING IN THE CERTIFICATES OF THE TRANSPORT COMPANY PRECLUDES THE PUBLICATION OF TARIFFS

Incorporated in the rail haul certificates of the Transport Company are several restrictions upon its operating rights, the pertinent ones being

(1) "The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the railway.

(2) "Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railway.

(3) "Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail."

385 Certainly this language cannot be construed to mean that the Transport Company shall have no tariffs or that it shall be confined to handling shipments moving on rail billing and at rail rates. For one thing, if such had been the intent, a half dozen words would have sufficed for the quoted restrictions, which, to our minds, were carefully drawn to (1) confine the operation of the Transport Company in the particulars set forth and (2) nevertheless leave the Transport Company in truth and in fact a com-

mon carrier free to exercise its duties as such under the Motor Carrier Act and free to invoke its corresponding rights.

The view taken by tariff officials would seem to ignore the very provision of the third condition which recognizes that the Transport Company may originate or receive in interchange a shipment from others provided it delivers it to the Railway for a *subsequent* rail haul.

Such a view also nullifies condition No. 2, which provides that the Transport Company "shall not serve, *or interchange traffic at*, any point not a station on a rail line of the Railway." Manifestly, the Transport Company, if confined to handling so-called "railroad traffic" could not possibly interchange such traffic at any place except at points on the line of the Railway and, if condition No. 2 is not utterly meaningless, we must draw from it an understanding that the Transport Company is free in its own right to publish tariffs and to interchange freight with others
386 than the Railway Company, so long as, in so doing, the freight is given a prior or subsequent rail haul on a through bill of lading.

Another circumstance, which we believe to be controlling, is that all certificates of the Transport Company, rail haul and others, require that the *Transport Company* shall comply with Section 217 of the Motor Carrier Act, which section pertains to the filing and keeping open of tariffs.

We therefore submit that the language of the certificates of the Transport Company will not admit of the construction placed upon them by tariff officials and, further submit, on the contrary, that such a construction is absolutely prohibited.

It will be borne in mind that the Transport Company has been granted certificates authorizing it to be a "common carrier by motor vehicle" which is defined as one undertaking "to transport * * * property * * * for the *general public* in interstate or foreign commerce by motor vehicle for compensation." Such being the case, it may be seriously questioned whether acceptance of the views of the tariff officials would not render the operations of the Transport Company liable to forfeiture because they would disregard the bounden duty of common carriers under the Motor Carrier Act to file and maintain tariffs in accordance with the provisions thereof, a duty which could probably not be discharged merely by operations under a railroad tariff.

The Commission is therefore requested to state, in so many words, that the Transport Company is a common carrier by motor vehicle, and that it has and shall be
387 permitted to enjoy the rights of such common carriers by the publication of rates, and that such rates may be published so as to provide in the most convenient and least costly manner for rail movement in addition to movement by applicant.

IMPORTANCE OF QUESTION

With federal regulation of motor carriers, it became clear to the Transport Company and to The Texas and Pacific Railway Company that the interchange of traffic would in many cases be beneficial, not only to the several carriers involved, but to the public. Arrangements were accordingly made for the Transport Company to become a party to various tariffs published by common carrier motor carriers and the transportation of interchanged freight over rails of The Texas and Pacific Railway Company was accomplished by naming said Railway in a directory published in accordance with Ex Parte 129, *Substituted Freight Service*, *supra*, and prior to the effective date thereof by publication of a substituted service rule which was permitted by the Commission pending disposition of Ex Parte 129.

The arrangements made were highly satisfactory to all carriers concerned, and, so far as we know, have never at any time been complained of by any carrier or by a single shipper.

Before the Transport Company took this action, and out of what it considered an abundance of precaution, it addressed an inquiry to the then Chairman of Division 5,
setting forth the contemplated action and asking
388 whether there was anything in its certificates which would prohibit publications of the tariffs in question. The then Chairman of Division 5, Commissioner Eastman, advised that while he could not decide such a question as a single member of the Commission, there appeared to be no express or implied restriction in the certificates of Transport Company which would prohibit establishment of the rates in question, in the manner in question.

From small beginnings in 1939 the amount of freight interchanged with various motor carriers increased very materially and at the present time approximately 1,250,000 pounds are interchanged each month, the freight received

from and that delivered to connecting motor carriers being approximately equal.

If required to cease existing operations, disruption of existing schedules, superior in many respects to those which could be otherwise obtained, would follow, and a serious financial loss would be sustained by the Transport Company, the Railway Company, and various motor carriers with which they interchange freight.

As an example of the tonnage handled, we may cite the interstate movement of less-than-carload freight from the Texas ports to points in West Texas and New Mexico served by the Transport Company. The usual route of movement is from the ports to Dallas or Fort Worth, where the freight is interchanged for further movement to the mentioned destination points. Such freight as is
389 interchanged to the Transport Company is normally loaded into a car of The Texas and Pacific Railway Company and transported to a setout point on a fast through train, at which point it is either delivered to the consignee or is transferred to a truck of the Transport Company for final movement to nearby destination points. In many instances such service is faster than that afforded by any other carrier or combination of carriers. The movement of such freight makes possible the operation of a through merchandise train and the revenue earned thereon makes it possible to maintain local depots and the services of resident agents, which at many points could not be justified by and would not be needed for the handling of carload freight alone.

Of course, it is true that lines of railroad running north and south between the Texas ports and Dallas and Fort Worth originate freight which is interchanged with Transport Company or The Texas and Pacific Railway Company, and all freight which does so originate is given the same character of expeditious handling by the Transport Company; however, the fact is that a majority of less-than-carload freight of the kind mentioned is originated by motor carriers and if the Transport Company and the Texas and Pacific are to have an opportunity to transport such freight interchange arrangements are essential.

Furthermore, by interchange arrangements freight originated by the Transport Company can be delivered to motor carriers for movement to inland towns or to towns having irregular or slow rail service, thereby afford

390 ing a better service than could be obtained by an all rail movement and a better service, in many cases, than could be obtained by an all truck movement.

Various motor and rail carriers are freely permitted to publish directories in instances where there are no rail haul certificates.[1] Some of the motor carriers are rail affiliates and some are not. Where certificates require a rail haul it seems all the more necessary to permit use of a directory or some substitute therefor. We claim for the Transport Company and for the Railway Company the right to compete for the transportation of all traffic which they are equipped to handle and assert that no rule or regulation is lawful or proper which unjustly burdens the exercise of such a right or which makes exercise thereof not reasonably possible. It so happens that the method of publication heretofore permitted appears to us to be the most reasonable manner of accommodating the Transport Company and The Texas and Pacific Railway Company to the situation; however, in view of the importance of the question we are quite
391 willing to waive theories provided some reasonable way of getting the job done is allowed.

Alternatives of Transport Company

Unless the Transport Company is permitted to utilize a directory in the discharge of its obligations to move freight partly by rail, its participation and the participation of The Texas and Pacific Railway Company in the transportation of less-than-carload freight on joint rates must cease, contrary to the provisions of the Motor Carrier Act.

We make the foregoing statement because it is impossible for the Railway Company to become a party to the motor carrier tariffs published by Agent Hughett and others for

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[1] See The National Substituted Freight Service Directory No. 100, Agent Later's I. C. C. No. 1, MF-I. C. C. No. 1; Midwestern Motor Freight Tariff Bureau, Inc., Substituted Freight Service Directory, No. 1, I. C. C. No. 1, MF-I. C. C. No. 119; The Central Substituted Freight Service Directory No. 200, Central States Motor Freight Bureau, Agent, I. C. C. No. 1, MF-I. C. C. No. 27; Southwestern Motor Freight Bureau, Inc., Substituted Freight Service Directory, Agent J. D. Hughett's I. C. C. No. 4, MF-I. C. C. No. 78.

Some of the railway companies participating in these directories are Chicago, Burlington & Quincy Railroad Company, St. Louis-San Francisco Railway Company (J. M. Kurn and John G. Lonsdale, Trustees), St. Louis Southwestern Railway Lines (Berryman Henwood, Trustee), Louisiana & Arkansas Railroad Company, Missouri & Arkansas Railway Company, and Atchison, Topeka & Santa Fe Railway Company.

the reason that to do so would violate as many[1], if not more, tariff rules than the Commission has authorized waiver of in Ex Parte 129, wherein provision was made for publication of directories.

Of course, it would be theoretically possible for the Transport Company and the Railway Company to duplicate the many tariffs published by Agent Hughett and other publishing agents, and secure the concurrence of all the carriers who are parties to such tariffs, probably more than one thousand. This would mean the compilation and printing of more than three thousand pages of rate tariffs alone, exclusive of supplements: it would also require the publication of a classification, station
392 lists, territorial directories, mileage circulars, etc.

Assuming it possible to do this, it would then be necessary, after filing such tariff documents, to post them in the literally thousands of stations on the lines of affected carriers. The cost of such procedure has precluded inquiry as to whether it would accord with the double-decked rules of the Motor Tariff Section and of the Bureau of Traffic. Further, if all of these separate tariff documents were compiled, filed and distributed, the public would obtain nothing more than it now has. The public would be worse off, because it would have another voluminous set of tariffs to plough through to determine rates.

While this is written under the heading "Alternatives of Transport Company," the truth about the matter is that there are no alternatives under the existing rules of the tariff departments of the Commission by which the Transport Company and The Texas and Pacific Railway Company can join in motor carrier rates. Their injury is substantial and they would seem to be entitled to some character of relief, particularly since the Commission has frequently stated that interchange arrangements between different types of carriers are in public interest, since the Motor Carrier Act permits and encourages the free interchange of freight between motor and rail carriers, and since the Department of Justice indicted and recently concluded litigation against the Texas and Pacific and other Class I railroads because of an alleged conspiracy to prevent interchange of freight with motor carriers.

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[1] Rules 30 and 107, Tariff Circular 20.
Par. 2, page 1, Tariff Circular M. F. No. 3.

393 IMPROPER PROCEDURE

If there are real doubts as to the operating rights of the Transport Company, they should be determined by a proper proceeding. Certainly, the Transport Company has a greater interest in the determination of its rights than anyone else, although, in this case, we do not believe there is any substantial question. It is submitted, however, that the proposed refusal to permit continuance of tariffs covering an operation which a carrier believes itself lawfully entitled to perform is not the proper way to originate a proceeding for the interpretation or determination of operating rights.

As practical evidence of the correctness of the view expressed, the Commission needs only to consider what would follow if each of its somewhat numerous bureaus, sections and departments, before exercising the particular authority delegated to it, required the Commission to first construe its orders. The Transport Company finds regulation no more onerous than does any other carrier, but believes in this instance that a result has been reached which was not intended by the Commission.

CONCLUSION

We do not believe that the Commission, which by granting a certificate told the Transport Company
394 "to hang its clothes on a hickory limb" intended to pursue the verse to its conclusion, and by its tariff rules, tell the Transport Company "but don't go near the water."

The rights of the Transport Company, whatever they are, are those of a common carrier. It does not want to forfeit its rights for failure to operate as a common carrier. The Transport Company and The Texas and Pacific Railway Company are ready and willing to comply with any workable rule which may be promulgated to govern the filing of tariffs; they believe that the most reasonable rule is the one found proper by the Commission in Ex Parte 129, i. e., publication of a directory by the Transport Company, which gives all necessary information to the shipping public and which does not involve excessive cost.

PRAYER

The Commission is requested to direct its officers to accept, file and maintain the directory published by the Transport Company, and to issue instructions to the effect that

the Transport Company shall be accorded equal rights with other common carriers, of filing and maintaining tariffs.

As an alternative, the Transport Company and The Texas and Pacific Railway Company request the Commission to provide some reasonable method by which
395 they may continue to join in the rates to which they are presently parties.

Respectfully submitted

R. S. SHAPARD
ROBERT THOMPSON
M. E. CLINTON
S. W. LANCASTER
Attorneys for The Texas and Pacific Motor Transport Company

Dallas, Texas
August 7, 1941

398 Before the Interstate Commerce Commission

In the Matter
of
THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY for orders defining its rights under certain certificates or for alternate relief.

Fourth Section Application No. MC-50544 and MC-50544, Sub. Nos. 1, 2, 3, 4, 7, 9, 10 & 14.

Transcript of Hearing

9:30 A. M.

Dallas, Texas, Wednesday, February 11, 1942.

Before: ALLAN F. BORROUGHS, *Examiner*.
Met pursuant to notice.

APPEARANCES:

S. W. Lancaster and W. O. Reed, Texas & Pacific Railway Building, Dallas, Texas, appearing for The Texas & Pacific Motor Transport Company, Applicant.

Scott Daly and Reagan Sayers, 304 Century Building, Fort Worth, Texas, appearing for D. C. Hall Transportation Company; Merchants' Fast Motor Lines, Inc.; W. A. Johnson d/b/a Johnson Motor Lines; H. E. English d/b/a Red Ball Motor Lines.

W. D. Benson, Jr., Levens & Benson, 206 Lubbock National Bank Building, Lubbock, Texas, appearing for Dal by Motor Freight Line, Inc., and Sunset Motor Lines.

399 C. M. Mulholland, 1040 Nicholas Building, Toledo, Ohio, appearing for Railway Labor Executives' Association.

J. D. Hughett, 1805 Sante Fe Building, Dallas, Texas, appearing for Southwestern Motor Freight Bureau, Inc.

F. H. Lynch, Jr., 1805 Sante Fe Building, Dallas, Texas, appearing for Southwestern Motor Freight Bureau, Inc.

401 PROCEEDINGS

Colloquy Between Examiner and Counsel

Exam. BORROUGHS: Come to order, please, gentlemen.

The Interstate Commerce Commission has set for hearing before the Examiner at this time and place, the petition of the Texas & Pacific Motor Transport Company for orders defining its rights under certain certificates or for alternate relief, with a view to the issuance of such orders or the taking of such further action which may be appropriate upon the record made at the hearing.

Upon entering appearances in this proceeding, indicate your name and address for the record, and if appearing in a representative capacity, whether you are admitted to practice before the Commission.

I now call for appearances. Who appears for the Petitioner?

Mr. REED: S. W. Lancaster and W. O. Reed, Texas & Pacific Building, Dallas, Texas, appearing for applicant, Texas & Pacific Motor Transport Company. Both of us are practitioners before the Interstate Commerce Commission.

Exam. BORROUGHS: Mr Lancaster, will you indicate that you are here?

Mr. LANCASTER: S. W. Lancaster.

Exam. BORROUGHS: Other appearances for Protestants or Interveners, indicate what status you have in this case.

Mr. DALY: Scott Daly, 304 Century Building, Fort
402 Worth, Texas. I am licensed to practice before the Interstate Commerce Commission, and entering an appearance for Merchants' Fast Motor Lines, Inc: W. A. Johnson d/b/a Johnson Motor Lines: H. E. English d/b/a Red Ball Motor Lines: D. C. Hall Transportation Com-

pany. I am entering appearance for those common carriers as their interests may appear, and, in connection with that, Mr. Examiner, after the appearances are in, I would like to make a statement in regard to the extent of our interest in this case.

Exam. BORROUGHS: And, are you a registered practitioner?

Mr. DALY: Yes, sir.

Mr. BENSON: W. D. Benson, Jr., Levens & Benson, 206 Lubbock National Bank Building, Lubbock, Texas, appearing for Dalby Motor Freight Lines, Incorporated, and Sunset Motor Lines, Incorporated.

Mr. Examiner, at this time, we don't know whether we are protestants or not, since we don't know the scope of the application for the hearing. So we make our appearances now as our interests may appear.

Exam. BORROUGHS: Are you a registered practitioner, Mr. Benson?

Mr. BENSON: I am an attorney at law and a registered practitioner before the Interstate Commerce Commission.

Mr. MULHOLLAND: C. M. Mulholland, 1040 Nicholas Building, Toledo, Ohio, representing the Railway Labor
403 Executives Association, and representing it as its interests may appear in this hearing. I am admitted to practice before the Interstate Commerce Commission.

Exam. BORROUGHS: Any additional appearances?

Counsel for the Petitioner, are you ready to proceed, or do you desire to make a statement before submitting evidence.

Mr. LANCASTER: I desire to make a short statement before offering any evidence.

This proceeding apparently arises from a tariff difficulty engendered by the fact that in certain of the certificates of the Transport Company, which word I would use to indicate The Texas & Pacific Motor Transport Company, there was a condition providing that over certain of its routes it shall be limited to the handling of shipments received from or delivered to The Texas & Pacific Railway Company on a through bill of lading and having a prior or subsequent rail haul.

This application was filed to secure a clarification of our rights under existing tariff rules of the Commission. It does not embrace any effort on the part of the Transport Company to remove the restrictions from certain of its operations to those having a prior or subsequent rail haul

under the condition which I mentioned at first. In some instances, we have filed applications for the removal of these restrictions, and we may file some hereafter.

404 As stated, however, we do not regard this proceeding as an application to remove the restrictions which, as we see them, relate solely to our operating rights and not to tariffs.

I would like to add, however, that if, in view of the Commission it is not possible for us to continue to participate in tariffs in substantially the same manner as we now do without an amendment of our certificates, we would like for the Commission to so indicate and afford at that time a further hearing for the purpose of amending our certificates, at which hearing both the Transport Company and competing carriers and other interested parties would have full information as to exactly what is involved.

As I have indicated, we do not fully understand the purpose of this hearing. Nevertheless, we have thought it advisable to bring three witnesses before the Commission, whose function will be to outline the existing scope of the interstate operations of the Transport Company, a history of the rate situation, and a statement in general of the policies of the Transport Company and its affiliated rail line.

I would like to call my first witnesses, unless there are other statements to be made.

Mr. DALY: I would like to make a statement, Mr. Examiner. In view of what Mr. Lancaster has said, I would like for the record to show that the clients whom we

405 represent are interested primarily first in seeing that the restrictions are not removed from the certificates, and from what has been said, I take it that the Commission would not remove the restrictions as a result of this hearing; that the Applicant is not asking that that be done.

I would like to further state that we are secondly interested in a continuation of the right of Texas & Pacific Motor Transport Company to interchange with independent common carriers. We would like to see that continued in the future, and would like to see some method worked out by the Commission whereby that privilege may continue, except that we do not want to see the restrictions removed from the certificates in order for them to be permitted to do so.

That is the interest that we have in the case.

Mr. BENSON: May I ask Counsel a question in order to clarify the matter?

EXAM. BURROUGHS: Yes.

Mr. BENSON: Mr. Lancaster, is it your thought and purpose to have the Commission by these proceedings to re-define or clarify or say what your existing restrictions mean?

Mr. LANCASTER: I can not say what it was my purpose. As a matter of fact, we did not understand that the petition which we filed would call for any hearing of any sort, since it only related, or the historical background of these rates, to some reasonable way by which we could continue
406 our interchange arrangements, which we were asking.

Mr. BENSON: In other words, the point I am trying to make, frankly, I don't know what their restrictions actually mean, and if there is to be evidence or arguments or briefs or anything of that kind to re-define the restrictions, why then we are interested in the hearing. If it is a matter of tariff provisions alone, or rate provisions alone, then I do not think that the clients I represent have any interest in the proceedings. But I believe we will let our appearance remain.

Exam. BORROUGHS: I might call all parties of record's attention to the petition itself, which is for orders defining its rights under certain certificates or for alternate relief; also an Order of this Commission which in setting this matter down for hearing refers to that petition and states that the matters presented in the petition be assigned for hearing with a view to the issuance of such orders or the taking of such further action as may be appropriate upon the record made.

Mr. LANCASTER: I might also note that in the prayer to the petition, starting on Page 14, it asks that the Commission direct its officers to accept, file and maintain the directory published by the Transport Company, and to issue instructions to the effect that the Transport Company shall be accorded equal rights with other common carriers, of filing and maintaining tariffs.

407 It says: "As an alternative, the Transport Company and the Texas & Pacific Railway Company request the Commission to provide some reasonable method by which they may continue to join in the rates to which they are presently parties."

That was our idea of the scope of the issues.

Exam. Borroughs: Gentlemen, I might say that, based upon the petition and the order itself, I believe the issues involved here are, first of all, the rights of the petitioner under its present certificates, its operating rights under those certificates, which would also include what tariffs it might file with the Commission in connection with those operating rights it contends it has.

Mr. Mulholland: Mr. Examiner, my interest is entirely in the question of the removal of the Condition 3, or Restriction 3. In order to protect our interests, I wonder if the record could show that this hearing will be confined to the tariff or rate question and not to the removal of the restriction. Apparently all parties agree that that is the case. On the other hand, I feel that it is necessary to protect the interests of my client to have an agreement or a ruling from the Examiner as to the scope of this hearing, because I would not want to get before the Commission later and have them on the record made here attempt to modify Condition 3. It seems to me that would be possible, in
408 view of the statement of all parties that that is not the intention at this hearing.

Exam. Borroughs: I can not commit the Commission as to what action it will take after the hearing is closed here. All I can do is focus the attention of all parties on the issues as I understand them from this petition on file, and the order of the Commission as served.

This proceeding, as I understand it, is for the purpose of taking testimony and evidence with a view to defining the rights of the petitioner under its present certificates or for alternate relief, and that would automatically incumbus the question of the filing of tariffs with this Commission under those certificates. Further, that upon the conclusion of this hearing the Commission may or may not take such further action as it deems appropriate upon the record made.

Mr. Mulholland: Won't the question of ruling on evidence come up, as to whether we can delve into the train schedules and the operations carried on by the Transport Company and the carrier? My thought was that, if this hearing is going to be opened up to go into all of the details and it should go into an application for the removal of the restriction, it seems to me we are going to go pretty far afield on the general issue raised by the petition.

Exam Borroughs: If those matters pertain to the present rights of this petitioner under its certificates,

409 they will be proper in this hearing. If it is concluded that they do not come within the scope of that issue, they will not be discussed.

Mr. LANCASTER: I might add that Mr. Mulholland and the Applicant find themselves on the same side in so far as the origin of this hearing. This hearing apparently was a result of a thought that where the Transport Company had to move shipments in part by rail for some reason, the reason never being entirely clear to me, we had no right to file a tariff providing for that very process. That is the substitution of rail for motor service.

(Discussion off the record.)

Mr. LANCASTER: The Transport Company in confining its evidence to what it conceives to be the issues involved, does so with confidence that, if it is in error, the Commission will continue to allow it to publish its tariffs pending a further hearing when the issues are more sharply defined.

Exam. BORROUGHS: Is there another appearance for the record at this time?

Mr. HUGHETT: I would like to enter an appearance for J. D. Hughett, H-u-g-h-e-t-t, 1805 Sante Fe Building, General Manager, Southwestern Motor Freight Bureau, Inc.

Exam. BORROUGHS: Are you a registered practitioner, Mr. Hughett?

Mr. HUGHETT: Yes, sir. And I would also like to
410 enter the appearance of Mr. F. H. Lynch, Jr., who is also at present a practitioner. He is also appearing for the Southwestern Motor Freight Bureau, Inc.

Exam. BORROUGHS: Mr. Lynch, will you indicate your personal presence here by saying: "I am here"?

Mr. LYNCH: I am here.

Exam. BORROUGHS: Thank you. I want the record to show that.

Any other statements, gentlemen, before we commence the receipt of evidence in this proceeding? All parties understand the issues as defined fairly comprehensively.

Mr. BENSON: In so far as I am concerned, I understand the issues as set forth by Mr. Lancaster, but I still don't understand the extent of the scope of the order of the Commission and what the Commission might do.

Exam. BORROUGHS: You heard the Examiner's statement. That did not clarify the matter in your mind at all?

Mr. BENSON: Yes, sir, somewhat.

Exam. BORROUGHS: Gentlemen, all I can do is to again refer you to the petition and the order of the Commission.

As I said before, this hearing is for the purpose of defining the rights of the petitioner under its present certificates with a view to the issuance of such orders or the taking of such further action as may be appropriate on the record made. In other words, we start on the premise of
411 the present authorities held by this petitioner, and the evidence to be adduced at this proceeding is for the purpose of clarifying its operating rights under those certificates. That would automatically include a matter of tariffs and the Commission's Rules and Regulations pertinent thereto.

Mr. BENSON: Pardon me—Mr. Examiner, if I understood the Examiner's statement, we are to take evidence in order to define the existing rights of this carrier?

Exam. BORROUGHS: The order of the Commission is all-inclusive. However, if you have read the petition, you will find that the primary issue is the matter of tariffs.

Mr. BENSON: I understand that, but I would like to submit that evidence would not be competent to define the rights of this carrier under its existing certificates, because those rights are a matter of law. And we would object to any consideration of evidence for the purpose of defining its existing rights, because those rights are a matter of law that may be determined by the Commission.

Exam. BORROUGHS: Perhaps counsel were together, but a little apart on phraseology. Perhaps you better say, "determining its operations," what it may do under those certificates. Is that better?

Mr. BENSON: That is all right, sir; yes, sir.

Exam. BORROUGHS: All right; gentlemen, if there is nothing further, call your first witness, counsel for
412 the petitioners.

Mr. LANCASTER: Mr. T. E. Huffman.

Mr. SAYERS: Mr. Examiner, at this time, may I enter my appearance: Reagan Sayers, 304 Century Building, Fort Worth, Texas, appearing for the same carriers for whom Mr. Daly entered an appearance, and my interest is the same. I will state to the Examiner, if I may, sir, that I apologize for the delayed appearance, but I have been in another hearing being conducted in the same building.

Exam. BORROUGHS: Are you a registered practioner, Mr. Sayers?

Mr. SAYERS: I am an attorney and a registered practitioner before the Interstate Commerce Commission.

T. E. HUFFMAN, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Huffman, will you state your name and your connection with the Transport Company and other interested parties in this case?

A. My name is T. E. Huffman, T. & P. Building, Dallas, Texas, I am General Freight Agent for the Texas & Pacific Motor Transport Company and General Merchandise Traffic Agent of the Texas & Pacific Railway Company, which positions I have held for many years. I am familiar with the operations of both companies, as well as of cer-
413 tain rail subsidiaries of the Texas & Pacific Railway.

Q. Now Mr. Huffman, will you just outline, please, the scope of the interstate operations of the Transport Company and give references to restrictions which are in its certificates?

A. The Texas & Pacific Motor Transport Company, which I will refer to as "Transport Company," operates over the highway as a common carrier by motor vehicle in interstate commerce, serving, generally speaking, substantially all the points on the Texas & Pacific Railway Company from New Orleans, Louisiana, to Pecos, Texas, the route of both the Transport Company and the Railway passing through Shreveport, Marshall, Longview and Fort Worth. The Transport Company also operates between Marshall, Texas, and Texarkana, Texas-Arkansas, along the route of the Railway. In addition, it serves points on the Texas-New Mexico Railway Company, the Weatherford, Mineral Wells and Northwestern Railway Company, and the Cisco & Northeastern Railway Company, which are subsidiaries of the Texas & Pacific Railway. Operations are also conducted between Texarkana, Texas-Arkansas, and the site of the Lone Star Shell Loading Plant and the Red River Ordnance Depot in the vicinity of Texarkana, and between Fort Worth, Texas, and the site of the Bomber Assembly Plant a few miles to the west, each of such plants being served also by the Texas & Pacific Railway.

414 All of the permanent certificates granted to the Transport Company contain provisions, either in the certificates or in the orders pursuant to which such certificates were acquired, providing:

(1) That the service to be performed by the Transport Company is limited to service which is auxiliary to or supplemental of the service of the Texas & Pacific Railway Company or its subsidiary rail lines.

(2) That applicant shall not serve or interchange traffic at any point not a station on the rail lines mentioned.

Certain of the certificates of the Transport Company contain an additional provision reading:

"Shipments transported by applicant shall be limited to those which it receives from or delivers to the Texas & Pacific Railway Company or its subsidiary rail lines under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail".

At this point, I offer a map showing the interstate operations of the Transport Company, together with the points between which the third condition is applicable. The map is self-explanatory.

Mr. LANCASTER: I now offer as Exhibit No. 1, the
415 map referred to by the witness. At this time, we have only one map here. We have some others en route over here, and if it may be received without objection, I would like to have it marked and offered.

Exam. BURROUGHS: Any objection to the receipt of the map identified as Exhibit 1?

Mr. BENSON: I assume, Mr. Examiner, that the Interstate Commerce Commission will take judicial knowledge of its own orders, and, should either the statement of Mr. Huffman or the map be mistaken with reference to the rights defined, that the Commission will follow its own orders, and, with that understanding, I have no objection to it.

Exam. BURROUGHS: Your understanding is correct. The map referred to will be received in evidence at this time as Exhibit 1.

(Exhibit No. 1, Witness Huffman, was received in evidence.)

Q. (By Mr. Lancaster) Will you proceed, Mr. Huffman?

A. The Transport Company interchanges freight with various motor carriers, the points of interchange at the present time being:

Abilene, Texas; Alexandria, Louisiana; Big Spring, Texas; Cisco, Texas; Dallas, Texas; Fort Worth, Texas; Gladewater, Texas; Hobbs, New Mexico; Longview, Texas;
Mineola, Texas; Mineral Wells, Texas; Monahans,
416 Texas; New Orleans, Louisiana; Odessa, Texas;
Pecos, Texas; Shreveport, Louisiana; Sweetwater, Texas; Texarkana, Texas.

Both in its local service and in connection with shipments interchanged with other motor carriers the Transport Company, by means of a directory, substitutes rail service for highway service in the movement of many shipments. This is done in all cases where the resulting service is more efficient or economical, and is done without fail where required by certificate provisions which limit shipments of the Transport Company over certain routes to those having a prior or subsequent rail haul.

Tariff arrangements for substituting rail for motor service have been in effect since 1939 and have operated to the material benefit of the Transport Company, its affiliated rail companies, interchanging truck lines and the general public, as is shown by examples I propose to give.

First, there are certain points, such as Hawkins, Texas, which are served by no common carrier by motor vehicle other than the Transport Company. Numbers of shipments originate on connecting truck lines destined to such points, which shipments could not be handled except for present tariff arrangement or some arrangement which would be substantially the equivalent thereof. Especially is this important where the connecting truck line origin or destination is not on a railway, making through rail rates available.

417 The substitution of rail for highway shipment, especially upon fast merchandise trains, results in a better and faster service in many instances, this being true both as to local shipments of the Transport Company and as to those which it interchanges with other lines.

The smaller truck lines operating across the line of the Texas and Pacific are benefited, in that they can obtain shipments via the Transport Company for movement to off-line destinations which, in many instances, they could not receive through existing motor carriers because of the fact that said motor carriers serve the point of origin as well as the point of destination and would be unwilling to short-haul themselves. Conversely, a motor carrier is free to turn over to the Transport Company shipments for further movement and delivery which it would not feel safe in doing with another carrier, which in many instances serves the origin as well as the destination.

Under the rules of the Texas Railroad Commission, over certain highways truck lines are prohibited from running over three trucks between 8:00 A. M. and 10:30 P. M. on Sundays and several specified holidays. The Transport

Company willingly receives traffic in interchange which it handles via rail at the times in question.

As a general proposition the service of the Railway is used for highway service in handling shipments from
418 the larger towns, in and around which highways are more congested, to outlying points, as in such cases there is usually a sufficient volume of traffic moving to warrant the operation of through merchandise trains.

There are certain cases in which it is desirable to have available at destination proper station facilities and the service of a local agent in connection with the receipt and delivery of freight, and by present interchange arrangements these facilities and services are made available to truck lines and their patrons in instances where paralleling independent truck lines do not have such facilities at destination.

I am generally familiar with competing truck lines, and an examination of their records indicates that since the Transport Company engaged in interchange with them there has been no curtailment of activity on their part; on the contrary, revenues have increased and their service has been improved.

I offer as an exhibit a statement showing the number of pounds of freight interchanged by the Transport Company with other common carrier motor carriers for the year 1941. The total amount interchanged was 17,111,888 pounds, of which 9,874,194 pounds was received by the Transport Company and 7,237,694 pounds delivered by the Transport Company. For purposes of comparison
419 during the same year, the total less-than-carload freight handled by the Transport Company and the Railway Company was 491,964,000 pounds.

Mr. LANCASTER: I now offer and ask that it be received in evidence the statement referred to by the witness showing the number of points of interchange.

Exam. BORROUGHS: Any objection to the receipt in evidence of proposed Exhibit No. 2, as identified?

Mr. DALY: No objection.

Exam. BORROUGHS: Hearing no objection, Exhibit 2 is received in evidence.

(Exhibit No. 2, Witness Huffman, was received in evidence.)

The WITNESS: There has been no complaint on the part of any shipper or receiver resulting from existing tariff arrangements, and we hope to be able to continue them in effect, since they operate to the benefit of the Transport

Company, its affiliated Railways, and the various truck lines with which interchange is conducted.

Mr. BENSON: For the purpose of the record, Mr. Examiner, let it be shown that, while we have no objection to the statement as read by Mr. Huffman, we are not to be bound by the legal conclusions contained therein.

Exam. BORROUGHS: It is testimony of a witness. You are not bound by any legal conclusion.

Mr. BENSON: No, sir, but I want that shown of
420 record, because the statement does contain numerous legal conclusions.

Exam. BORROUGHS: Does that complete your statement, Mr. Huffman?

The WITNESS: Yes, sir.

Mr. BENSON: Or rather—I called it "legal conclusions" —I mean that would be inadmissible as evidence as conclusions upon the part of the witness.

Mr. DALY: Mr. Examiner—

Exam. BORROUGHS: Wait a minute. I don't understand your statement. This statement here has been read in. There has been no objection to any part of it. Are you objecting in a general way to certain phases of it, and, if so, you will have to clarify that for the record? I will have to rule individually on certain portions of it.

Mr. BENSON: That was just the purpose of it. For instance, Mr. Huffman in his statement says that certain practices are for the benefit of all of his connecting carriers. Now, I want the record to show that we are not bound by that or admitting the truthfulness of any such conclusion, because it is merely a conclusion.

Exam. BORROUGHS: In other words, you are not objecting to any of this testimony, but you don't want to be bound by it; is that it?

Mr. BENSON: By the conclusion; yes, sir.

Exam. BORROUGHS: Your position will be shown of record.

421 Mr. LANCASTER: I wonder if I may take Mr. Huffman off and use Mr. Hughett, who is in a hurry to get back to his office?

Mr. DALY: Certainly. I want to make an objection, but I will do it after Mr. Hughett concludes, if it is all right with the Examiner.

Exam. BORROUGHS: Is there further direct of this witness, Counsel?

Mr. LANCASTER: No, sir.

Mr. DALY: Mr. Examiner, at this time, I would like to object to the entire testimony of Mr. Huffman in its entirety in so far as the Commission may consider said testimony with the purpose in mind of removing the restrictions. I have no objection to any part of the testimony in so far as the Commission may consider it in regard to the tariff question, and I want the record to show that I did not object to each statement individually as testified to by Mr. Huffman, for the reason that it would unduly incumber the record, and I just want to enter an objection for that one purpose, a limited objection.

Exam. BORROUGHS: In fact, then, your position is not that of an objector; you are simply at this time requesting the Commission not to take any action with respect to changing those restrictions as a result of any evidence offered in this proceeding; is that it?

422 Mr. DALY: Any evidence offered by Mr. Huffman.

Mr. LANCASTER: I think I can answer that by saying that we do not regard the testimony of Mr. Huffman as being in anywise evidence that the existing restrictions on the operation of the Transport Company should be removed.

Mr. DALY: That is all I want.

Exam. BORROUGHS: Of course, any action that the Commission takes with respect to any of this evidence or testimony can not be restricted in this hearing by any objection or motion.

Mr. DALY: It could be restricted, could it not, Mr. Examiner, by counsel for the applicant stating the purpose for which it was introduced, as he has just done?

Exam. BORROUGHS: I can not commit the Commission on any basis such as indicated by yourself. Counsel can indicate what it is offered for, and you gentlemen can interpret what your viewpoints are, but this Examiner will not commit the Commission with respect to any of this testimony or evidence.

Mr. DALY: It is just my thought that, since counsel for the applicant has stated that he did not want it considered by the Commission except for this purpose, that would not give him any more than he has asked for.

Exam. BORROUGHS: We have your viewpoint on the record. Is there any cross examination of Mr. Huffman?

Mr. BENSON: No, sir.

423 Mr. DALY: No, sir.

Exam. BORROUGHS: He is excused. Call your next witness, sir.

(Witness excused.)

J. D. HUGHETT was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Hughett, will you state your full name and address, please?

A. J. D. Hughett, 1805 Santa Fe Building, Dallas, Texas.

Q. Are you connected in any capacity with the common carrier motor carrier bureau serving the southwestern region?

A. Yes, sir; I am General Manager of the Southwestern Motor Freight Bureau, Incorporated.

Q. And that Bureau does what?

A. That bureau is a corporation existing under the laws of the State of Texas, originated for the purpose of handling rate and tariff matters for the motor carriers in the five States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, and for the publication of rates.

Q. Are all or substantially all of the common carrier motor carriers operating under the tariffs you have outlined members of your association?

A. Practically all of them, Mr. Lancaster; some 190 lines, I believe.

424 Q. Mr. Hughett, you are the publishing agent, or your organization is the publishing agent, as well for the Texas & Pacific Motor Transport Company as the various lines that you have mentioned?

A. That is correct; publishing both their local and joint line rates.

Q. Mr. Hughett, will you state whether or not the L. C. L. rates which are maintained by you for account of various motor carriers and the rates which are maintained by the railroads serving the same territory are the same? A. Generally speaking, they are exactly the same.

Q. You published the arrangements under which the Transport Company substituted the service of the Railway Company for its over-the-highway service prior to the decision in *Ex Parte* 129, and after that decision you published the substituted service directory for the same purpose?

A. That is correct, under special permission from the Interstate Commerce Commission.

Q. Do you know from contacts with members of your organization whether or not there is objection from the standpoint of the so-called independent motor lines to continuing the arrangements which are now in effect, either by the rule in force now or by some other special permission?

A. Mr. Lancaster, I would like to make the statement with respect to the position of the motor carriers in regard
425 to this particular publication we have, if I may.

Q. I would be glad to have it, sir.

A. When we received the application of the T. P. Motor Transport to establish joint through rates with the motor carriers, this matter was presented to a meeting of the operators themselves. It happened so that it could be presented at an annual membership meeting to be held in Houston, Texas. The motor carriers have fought the granting of certificates to rail carriers consistently in this territory for operation of motor vehicles over the highways where that was done under convenience and necessity.

There have been several purchases made by railroads to which there were not any objections. If I recall correctly, the original purchase of the T. P. Motor Transport or the Forwarding, Storage and Warehouse Company, was not objected to by the motor carrier industry, and it was the consensus of the operators at this Houston meeting that, if the rail carriers were through subsidiaries going to have operating rights over the highways of motor trucks, it was highly desirable that they use the same rates that we used and also have full interchange rights with other motor carriers. In other words, we desired them to conduct it as near as possible as a motor carrier in line with the existing non-controlled motor carrier operators.

Mr. Daly: In so far as their tariffs and rates.

426 The Witness: That is right; and we desired joint through rates. I say that because that was discussed specifically. And the present tariff publication as made is highly desirable from the motor carriers' viewpoint. The question of its legality is probably the question before the Commission more than any other thing. However, we do think that, if there is no objection from the shipping public or the competing motor carriers to the continuance of the existing publication, in so far as the Commission may grant such continuance of the existing publication, certainly no one is being hurt.

Q. (By Mr. Lancaster) Mr. Hughett, when you said, the "legality of the rates," do you mean whether or not the rates are in consonance with the rules of the tariff officials of the Commission, rather than whether or not they are authorized under the Motor Carrier Act?

A. And go to the question of whether or not the rates might violate some provisions of your operating rights.

Otherwise, they certainly are legal, because they have been authorized in the manner in which they are. And, if they are illegal, they have evidently been made legal by the continuance of the existing arrangements by authority of the Commission, knowing what is involved.

Mr. LANCASTER: That is all on direct.

427 Exam. BORROUGHS: Cross examine.

Mr. DALY: I have no questions.

Cross Examination:

Q. (By Mr. BENSON) Mr. Hughett, you made the statement that motor carriers had no objection to the publication of the tariff for the Transport Company and that they wanted them as a party to the tariff. You do not wish to imply that the carriers whom you represent wanted that to the extent that, if it should become necessary to remove restrictions, those be removed, do you?

A. Since you have asked that question, I will say this, that I think the motor carrier industry would be willing—

Mr. DALY: Just a minute.

The WITNESS: Just a minute. He asked me a question, and I desire to answer it.

Mr. DALY: Just a minute. I want the record to show that, in so far as the clients that we represent, we do not want to be bound by any statement that Mr. Hughett might make in regard to what our clients want. Now, that is a matter for the clients themselves, instead of Mr. Hughett.

Exam. BORROUGHS: You have no objection to the question as asked, but simply you want your position shown of record that your clients do not join in this statement of the witness; is that it?

Mr. DALY: I object to the question.

428 (Discussion off the record.)

Mr. DALY: Mr. Examiner, I want to object to that question, because it would necessarily call for hearsay testimony and would call for a conclusion of this witness as to what the independent common carriers want.

Mr. LANCASTER: I submit that that would go to the weight of his testimony, and the question having been asked on cross examination, I think it is fair to answer it, although we don't insist on it.

Exam. BORROUGHS: All right; let's read the question again, please.

Mr. BENSON: He has made some statements with reference to motor carriers. Dalby Motor Freight Lines is one of the carriers that he purports to represent. Now, I don't

know what the position of those motor carriers is from his testimony with reference to the removing of these restrictions, and if his testimony goes to that extent, then I want to object to all of his testimony and ask it be stricken in so far as Dalby Motor Freight Lines and Sunset Motor Lines are concerned, because they are participating members of his tariff.

(Discussion off the record.)

Mr. Benson: Let the record show that the testimony of Mr. Hughett has to do with tariff provisions only, and I withdraw my objection.

Mr. Lancaster: You mean you withdraw your question?

429 Mr. Benson: I withdraw my question.

Exam. Borroughs: Any analysis of this evidence that you may put on it, Counsel, has nothing to do with the actual weight or consideration to be given to it by the Commission. Do you, or do you not withdraw your question, regardless of what weight or how it is considered?

Mr. Benson: I withdraw the question. Let the record show, however, that neither Dalby Motor Freight Lines nor Sunset Motor Lines, who are members of Mr. Hughett's tariff, are bound by the statements made by Mr. Hughett, purporting to represent them.

Exam. Borroughs: The record will show your statement for what it is worth. Any further questions?

Mr. Benson: That is all.

Mr. Daly: May I ask Mr. Hughett one question, please, sir?

Exam. Borroughs: Yes, sir.

Q. (By Mr. Daly) Mr. Hughett, on direct examination, you testified concerning a meeting of the common carriers, board meeting—directors' meeting, as I recall— A. Just to correct as we go along, I said a membership meeting.

Q. State whether or not it was your intention to testify that the common carriers had expressed to you their desire to interchange freight with the Texas & Pacific

430 Transport Company and to enter into joint rates with the Texas & Pacific Transport Company and to be a member or a party to the same tariffs as the Texas & Pacific Transport Company?

A. That is correct.

Q. And that was all that you intended to testify to on direct examination in regard to the wants and the desires of the independent common carriers?

A. That is right.

Mr. DALY: That is all.

Exam. BORROUGHS: Any further questions?

Mr. LANCASTER: That is all.

Q. (By Exam. BORROUGHS) Just a moment, Mr. Hughett. Under the tariffs as published, does not the motor carrier, the petitioner, and the rail carrier, its affiliate, have two rates on the same traffic between the same points at the same time?

A. That could be possible.

Q. And, under those circumstances, can they not assess either according to their discretion?

Mr. LANCASTER: I think that is a question of law, if your Honor please, and I object to this witness being asked that.

Exam. BORROUGHS: The last part of the question will be withdrawn, Counsel. Your position is, I believe, well taken.

However, the prior part of the question will stand.

431 Q. (By Exam. BORROUGHS) Do you desire to change your original answer to the first question?

A. I do.

Q. What is your present answer?

A. The present answer is that, if it moves wholly by rail, there is only one rate in effect, and that is the rail rate. If it moves by rail and motor carrier under a combination or coordinated service, then the motor carrier rate would be in effect.

Q. If it was accepted at an interchange point by the motor transport company and was destined to a point which both the transport company and the rail company served, isn't it a fact that there might be an occasion where different rates prevail between those points, dependent upon which tariff was assessed?

A. The shipment originates on a motor line, not the T. & P. Motor Transport, is that the first part of that question?

Q. The interchange point which the petitioner serves with some other motor carrier, when they pick up a shipment there.

A. If another motor carrier has a shipment and offers it to the only person he could offer it to, which is T. & P. Motor Transport, because he has no through rates in connection with anybody except T. & P. Motor Transport. Now, then, after the T. & P. Motor Transport gets the shipment, they may, under the authority granted under this

tariff provision, either move it by the motor transport all of the distance, or they may at some point in there substitute the services of the rail carrier. But, in any event, it would move at the motor carrier rate.

(Discussion off the record.)

Exam. BORROUGHS: Before releasing these witnesses, let me direct a question to counsel for petitioner. Do you contend that under the petitioner's restricted certificates it is within its operating rights to accept shipments direct from the shipping public on its own bills of lading and then have such shipments transported by the railroad affiliate?

Mr. LANCASTER: We say it is not only its right but it is its very clear duty under the motor carrier act. The transport company holds operating rights as a common carrier by motor vehicle. Both the statute and the common law decision require that such a carrier hold itself out to do the very type of operation indicated by your Honor's question. Furthermore, each and every certificate of ours provides that the rights therein called for shall become effective only upon compliance by the transport company with Section 217 of the Motor Carrier Act, which is the section that pertains to the filing of tariffs.

As an additional thing, I might add that one of the restrictions specifically recognizes that there may be shipments received by the transport company from a member of the public and then delivered to the railway company. I have a few other thoughts on that, but I don't think this is the time to give them.

(Discussion off the record.)

Q. (By Exam. BORROUGHS) Now, directing this question to the witness again: Under the tariffs as presently published, do not the petitioner carrier and its rail affiliate have two rates on the same traffic between the same points at the same time?

A. Treating them as separate entities, I would answer the question as yes, because the rail carriers have to file their rates under Section 1 of the Act, and the Motor Carrier, even though he be a subsidiary of the parent company, must file his rates under the Part 2 of the Motor Carrier Act, as required by law.

Mr. LANCASTER: Just for the purpose of the record, we do not wish to be bound by that answer, because that calls for a conclusion that, if not wholly, is largely a conclusion of law, and whether or not there are two rates applicable, in view of the obligation of a carrier to always apply the low-

est rate applicable where there are two, is a matter that might cause some confusion unless it is understood that there are two paper rates, but it is our understanding that always the lowest rate is the applicable rate and that in every instance carriers have been held liable for the
434 mis-routing or for an overcharge where they make anything over the lowest rate.

Exam. BORROUGHS: The question went to a paper rate, Counsel.

Q. (By Exam. BORROUGHS) Mr. Hughett, as a publishing agent and as an expert in your line, does not such an arrangement as referred to permit shipments to be transported by either the transport or rail carrier, whichever one takes the lower charge, regardless of which transported the shipment?

A. Handled only in local traffic, there might be some question, but handled in joint traffic with other carriers, there would be no question whatever but what the rate published in the motor carrier tariff would be the applicable rate.

Q. Even though the rail carrier transported the shipment?

A. Even though the rail carrier transported the shipment.

Q. Why is that?

A. I am speaking now because of the authority granted by the Commission on the substitution. Now then, the whole fabric is predicated upon the granting of the authority of the Commission to substitute the services of rail carrier for motor carrier service, or vice versa. And, incidentally, the Commission has granted it in so far as the substitution of motor truck service is concerned for rail carrier service. So, even though we did not have
435 our particular tariff in effect, the rail carrier, if he had rates filed under Section 217 of the Motor Carrier Act as a motor carrier, and also had rail rates filed under Section 1 of the Act, and he substituted those, then the two rates would be in effect. It does not create a new situation to what is already created by the substitution of the motor carrier service for the rail carrier service at the rail rates. And, if it is moved in joint traffic, there is no question about what the applicable through rate is, because the only applicable through rate that the motor carrier had is published in the motor carrier tariff, and the only authority that the rail subsidiary would have to move it by

rail would be the authority of the Commission on the substitution.

(Short recess.)

Exam. Borroughs: Is there anything further now of Mr. Hughett while he is on the stand? If not, you are excused, Mr. Hughett. Thank you, sir.

(Discussion off the record.)

Exam. Borroughs: Is there another question of Mr. Hughett before he is released?

Q. (By Mr. Daly) Mr. Hughett, isn't it true that this same rate problem would arise regardless of whether the restrictions which are now in the certificates of the T. & P. Motor Transport Company which require either a prior or subsequent rail haul?

436 A. Those questions would be involved regardless, as long as substitution was used.

Exam. Borroughs: Thank you, Mr. Hughett. You are excused again. Call your next witness, Counsel.

(Witness excused.)

Mr. Lancaster: Mr. McDonald.

C. S. McDonald was sworn and testified as follows:

Direct Examination:

Q. (By Mr. Lancaster) Mr. McDonald, will you state your name, your residence and your occupation, please, sir?

A. My name is C. S. McDonald. I reside in Dallas, Texas. I am Assistant General Freight Agent for the Texas & Pacific Motor Transport Company and Assistant General Merchandise Traffic Agent for the Texas & Pacific Railway Company.

Q. You are familiar with the history of the rates of the transport company, since it acquired operating rights under the Motor Carrier Act and also with its interchange arrangements which are now in effect?

A. I am.

Q. Will you proceed with a statement with regard thereto?

A. The Texas & Pacific Transport Company, which I will hereinafter refer to the "Transport Company," having been granted rights, subject to limitations in some instances, as a common carrier of property by motor

437 vehicle in interstate or foreign commerce via routes closely paralleling a substantial portion of the line of the Texas & Pacific Railway Company and certain of its

rail subsidiaries, in May, 1939, or thereabouts, it was decided, in order to fully exercise the rights granted and thus make available a service in the best interests of the public, to establish rates via its line locally the same as the all-motor rates of competing common carriers by motor vehicle and to interchange freight with connecting motor carriers under joint all-motor rates published for application via other common carriers by motor vehicle.

Before the inauguration of such rates and interchange arrangements, the proposed plan was laid informally before certain members of the Commission's staff. In reply to an inquiry from counsel for the Transport Company, Mr. Eastman, then Chairman of Division 5, in a letter dated June 6, 1939, advised:

> "You will understand that I have no authority to decide such questions as a single member of the Commission, and the Commission itself is loath to interpret its decisions, preferring to let them speak for themselves. However, I may say that I find in the conditions imposed in the cases cited no express restrictions that the Transport Company shall not establish
> 438 through routes and rates with other motor carriers, nor any implied restriction of this character. As at present advised, therefore, I see no reason for believing that the Transport Company may not lawfully interchange traffic with other motor common carriers, provided it complies with the applicable conditions in connection with its handling of such traffic."

Following this, the Transport Company proceeded to arrange its participation in tariffs naming all-motor rates applying between points in Southwestern Territory; also between points in that territory, on the one hand, and points in so-called Western Trunk Lines, Illinois Freight Association, Central Freight Association, Southern and Trans-Continental Territories, on the other, with the express understanding and specific instructions that a substitution rule be published allowing the Transport Company at its option to provide a prior or subsequent rail haul.

The Transport Company first entered its participation in all-motor rates between points in Southwestern Territory effective July 26, 1939; between points in so-called Western Trunk Line Territory, on the one hand, and points in Southwestern Territory, on the other, effective December 18, 1939; between points in so-called Illinois Freight Asso-

ciation Territory, on the one hand, and points in Southwestern Territory, on the other, effective October
439 10, 1939; between points in so-called Central Freight Association Territory, on the one hand, and points in Southwestern Territory, on the other, effective October 9, 1939; between points in Southern Territory, on the one hand, and points in Southwestern Territory, on the other, effective October 18, 1939; between points in Trans-Continental Territory, on the one hand, and points in Southwestern Territory, on the other, effective September 21, 1939.

On or about the dates the Transport Company entered its participation in these rates a rule was published in each rate tariff by virtue of special permission of the Commission, authorizing the Transport Company to substitute, at its option, rail service for its motor vehicle service, said rule being the same as that set forth in Appendix I (c) in Ex Parte No. 129, 232, I. C. C. 683. Effective March 6, 1940, this rule was cancelled and in lieu thereof a provision was published in each of the rate tariffs subjecting shipments handled under said tariffs and at the rates therein provided, to the provisions of Southwestern Motor Freight Bureau, Inc. Substituted Freight Service Directory No. 1, Agent J. D. Hughett's I. C. C. No. 1, MF-ICC No. 59, the application of which will be later explained. This publication was accomplished by authority of the Commission's Permission R-M No. 2418 of February 6, 1940.

Effective the same date—that is, March 6, 1940—by authority of the Commission's Permission R-M No.
440 2418, Southwestern Motor Freight Bureau, Inc. Substituted Freight Service Directory No. 1, Agent J. D. Hughett's I. C. C. No. 1, MF-ICC No. 59, became operative. This directory provided for the substitution, at carrier's option, of rail service for motor carrier service, under the application of Item No. 1 thereof, reading:

"Unless the shipper directs that the rail carrier service shall not be performed, the motor carriers parties hereto may, at their option, substitute rail service between the points via the rail carriers shown herein, for their actually available services via highways for which such motor carriers have lawful operating rights as common carriers via motor vehicle (Note A).

"When substitution service is performed under provisions of this Tariff in connection with rates published in tariffs making specific reference hereto, the rates

named in said tariffs will apply in connection with the carriers named in this Tariff.

"NOTE A—When rail service of the St. Louis Southwestern Railway Company (Berryman Henwood, Trustee) and/or the St. Louis Southwestern Railway Company of Texas (Berryman Henwood, Trustee) is substituted for highway service, such substitution will be permitted on less than truckload traffic only."

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Q. Mr. McDonald, let me ask you something right there. In your rate tariffs is there a note to the effect that the rates will apply over the route of the transport company where there is a prior or subsequent rail haul only provided the shipper elects to give the transport company the right to substitute a rail haul?

A. There is a provision making reference to the directory.

Q. Have I stated the substance of it?

A. Of that item?

Q. Yes, sir.

A. The substance of that item is that shipments handled under this tariff and all rates herein provided shall be subject to the provisions of the substituted directory.

Q. And also subject to the provisions of the certificates of the transport company which will allow application of the rates between certain points only when there is a prior or subsequent rail haul?

A. That is correct.

Q. All right; that is what I wanted to know.

A. Yes, sir.

Q. All right now, continue.

A. This method of publication providing for the substitution of rail service for motor carrier service has

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continued up to the present time and is now in effect. The current directory is Southwestern Motor Freight Bureau, Inc. Substituted Freight Service Directory No. 1-D, Agent J. D. Hughett's I. C. C. No. 5, MF-ICC No. 80. It applies for account of the following motor carriers.

Frisco Transportation Company, Kansas City Southern Transport Company, Inc., Landa Motor Lines, Louisiana, Arkansas & Texas Transportation Company, Missouri and Arkansas Transportation Company, Missouri Pacific Freight Transport Company, Southwestern Transportation Company, Texas and Pacific Motor Transport Company.

The Transport Company has employed this method of publication as a means of substituting rail service for its motor service in every case where such substitution is required by the operating authority granted the Transport Company and also in other instances where the said operating rights do not so require but where such method of transportation is in the best interest of the public.

I now offer a statement showing tariffs to which the Transport Company is presently a party, naming rates, rules and regulations governing transportation of property by motor vehicle in interstate or foreign commerce.

Mr. LANCASTER: I ask that the exhibit offered be received in evidence as Exhibit No. 3.

Exam. BORROUGHS: Any objection to the proposed
443 exhibit? Exhibit 3, as identified, will be received in evidence.

(Exhibit No. 3, Witness McDonald, received in evidence.)

Q. (By Mr. LANCASTER) Mr. McDonald, let me interrupt you there. You have already stated the motor carriers parties to Mr. Hughett's tariff substitution rule. Is it a fact that the various motor carrier tariff publishing agencies here shown also publish substitution rules?

A. That is true.

Q. Now, are there numerous carriers which by the directory method employ a substitution of rail for highway traffic in each of the other territories also?

A. That is correct.

Q. Do you happen to know whether or not the motor carriers are in all instances affiliated with rail companies?

A. No, I do not know that they are all affiliated with rail companies; no, sir.

Q. (By Exam. BORROUGHS) You mean you just don't know, or do you know and they are not? What is your statement?

A. I didn't know that they are affiliated. I do not know that they are affiliated. In other words, some of them are not affiliated.

Q. In other words, you have knowledge of the subject, and your answer is that some are and some are not; is that correct?

A. That is correct. Some are and some are not.

444 Q. (By Mr. LANCASTER) All right, sir; proceed.

A. That completes the history of the Transport Company.

Q. Continue with your remarks about the exhibit you just offered.

A. That exhibit outlines in brief the application of each tariff and also shows the number of pages effective as of today or later where so indicated on the exhibit.

Q. The total number of pages being 6,943 as of today?

A. That is correct.

Q. Will you now continue and discuss some of the tariff rules adopted by the Commission which make it necessary from a practical standpoint to continue arrangements such as now in effect or other arrangements similar to those now in effect?

A. The Texas & Pacific Railway Company can not become a party to the tariffs naming the all-motor rates now enjoyed by the Transport Company because to do so would violate Rule 107 (c) of Section Two, Supplement No. 5, to the Commission's Tariff Circular No. 20, reading:

> "No rule or provision of an all-motor tariff filed with the Bureau of Motor Carriers under an MF number may be made applicable to or made to govern any joint rail-motor rates."

Q. Right there, where you said the T. & P. Railway Company can not become a party to those, you mean other than by participation in a directory?

445 A. That is correct. I meant just enter their participation in those rate tariffs, named tariffs.

Neither can the all-motor rates be published in tariffs to which the Texas & Pacific Railway Company is now a party, because to do so would violate Rule 30, Section One, Supplement No. 5 to the Commission's Tariff Circular No. 20, reading:

> "Rates, rules or charges applying to transportation wholly by motor carrier or to transportation partly by motor carrier and partly by water (where the water carrier is not railroad-controlled and is not operating under Section 5 (21) of Part I of the Interstate Commerce Act and when no part of the through transportation is by railroad or by a railroad-controlled water carrier) may not be published in any schedule filed pursuant to Section 6 of Part I of the Interstate Commerce Act and issued under these rules."

Further, should the Texas & Pacific Railway Company, or the Transport Company, publish tariffs containing joint rail-motor rates the same as the present all-motor rates, such tariffs could not be utilized by the all-motor carriers because to do so would violate Rule 107 (a) Section Two,

Supplement No. 5 to the Commission's Tariff Cir-
446 cular No. 20, reading:

"Rates applying exclusively by motor carrier may not be published in any schedule containing joint rail-motor rates filed pursuant to Section 217 of Part II of the Interstate Commerce Act and under the provisions of this circular."

Q. (By Mr. LANCASTER) Mr. McDonald, where you refer to present all-motor rates, you mean the rates that are made to apply as a directory over parts of the line of the Texas & Pacific?

A. That is what I mean.

Q. And you are not undertaking to describe the actual movement of the traffic under those rates?

A. I am not.

Q. All right, sir. I just wanted to get it clear. All right, if you will continue, please.

A. The only alternative, therefore, to continuing the present rates in which the Transport Company now enjoys representation would be for the Transport Company or the Texas & Pacific Company to duplicate the said present motor carrier rates, rules and regulations in accordance with the tariff rules laid down by the Commission in Section Two, Supplement No. 5 to its Tariff Circular No. 20.

To compile and keep up such tariffs, if physically possi-
ble, in any accurate manner, would, to say the least,
447 be prohibitive in cost. For instance: Exhibit No. 3 shows 6,943 pages of tariff matter governing transportation via the Transport Company. Several thousands of pages of supplemental matter have already been cancelled. For instance, 140 supplements have so far been issued to Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Freight Tariff No. 29, MF-ICC No. 73, of which only eight are effective. This means that supplemental matter in the other 132 supplements have been cancelled since issuance of the tariff.

As a further example, 700 corrections have already been made to Rocky Mountain Motor Tariff Bureau, Inc., Agent, Commodity Tariff No. 6, MF-ICC No. 11, since it became effective November 1, 1940. 315 revised pages of corrections to Rocky Mountain Motor Tariff Bureau, Inc., Agent, Trans-Continental Motor Freight Territory Directory No. 1, MF-ICC No. 12, have just recently been issued, scheduled to become effective February 24, 1942. I now offer in evidence these 315 revised pages of correction matter.

Q. (By Exam. BURROUGHS) Mr. McDonald, already on file with or to be filed with the Commission?

A. Under the rules, they are required to be filed with the Commission by the publishing agent.

Exam. BURROUGHS: Counsel, the Commission will take judicial notice of that tariff publication on file with it. I don't believe it is necessary at this time to offer such
448 a voluminous exhibit for this record.

Mr. LANCASTER: We desire to file the exhibit only to illustrate the impossible volume of work which would be put upon the Transport Company and the Railway Company if they were required each to undertake to file and publish their separate tariffs, and we have no desire to burden the record. However, we would like to say for the record that this one supplement of one motor carrier tariff bureau contains 315 pages, and they are issued with some frequency.

Exam. BURROUGHS: All right, proceed.

The WITNESS: In Agent J. D. Hughett's Tariff No. 1-B, MF-ICC No. 81, which names all motor rates between points in Southwestern Territory, there are approximately 262 participating carriers. The Rocky Mountain tariffs naming all-motor rates from and to Trans-Continental Territory apply from and to approximately 10,000 points. It is therefore clear that to duplicate the present all-motor tariffs a large force of tariff compilers would be required and also other clerical help. Additionally it is also clear that in order to print sufficient copies of the tariff to meet the needs of the participating carriers and the shipping public a tremendous printing expense alone would be incurred. It could not be reasonably anticipated that the concurring motor carriers would be agreeable to bearing any share of the cost incident to compiling, maintaining
449 and supplying these tariffs simply for the privilege of participating in rates with the Transport Company.

It follows that it is inescapable to reach any conclusion but that heretofore expressed that it would be prohibitive for the Transport Company or the Railway Company to publish tariffs that would afford the Transport Company the representation it now enjoys, and even if this were done it would not produce any rates or service different from that which now obtains by virtue of the presently prevailing simple and inexpensive publication.

That publication to which I refer means the substituted freight service directory.

Q. (By Mr. LANCASTER) Mr. McDonald, when the Witness Hughett was on the stand some references were made to the fact that it might be possible for there to be two

rates available, and especially to the fact that where there was a joint agent you would have a choice of it. Can you give me offhand some other situations where the same thing obtains at the present time and has obtained for so many years as to have been inquired of if there were anything fundamentally wrong with it?

A. Yes, sir, there are numerous instances in Southwestern territory where at the same point rail-water routes are available under joint through rates in addition to all rail routes under joint through rates. At the same points, there is also available routes via the railway express
450 agency. The charges applicable via those different types of transportation are generally in every case different. That is, the rates via rail and water routes, those via all-rail routes, and those applicable via the express agency, vary.

Q. I think that is enough to illustrate it. And, let me ask you this: In most of the towns served by the Railway Company and served also by the Transport Company, are there other motor carriers running either themselves or by connections to and from the same territory?

A. Yes, sir, that is correct.

Q. These tariffs apply to freight on which pick-up and delivery service is given, do they not?

A. That is correct.

Q. And the shipper would have the same opportunity then, whether or not the transport company operated, of getting a different rate according to whether or not he called up the agent of the Railway Company or the agent of another truck line?

A. That is correct.

Q. As a matter of fact, do you know whether or not any real confusion exists or has existed in the minds of the shippers with whom you do business as to the rates involved in a particular shipment?

A. No, sir, there never has.

MR. LANCASTER: I believe that is all.

451 EXAM. BORROUGHS: Cross examine.

Cross examination:

Q. (By Mr. DALY) Mr. McDonald, you know that Johnson Motor Lines operates over U. S. Highway 80 from Fort Worth to Big Springs, don't you?

A. I think that is correct. I know they do operate, but I don't know about 80, whether they operate over 80, or not. I don't know whether they operate as far as Big Spring, but they do operate over a large portion of that.

Q. For the purpose of my cross examination, assume that Johnson Motor Lines does operate from Fort Worth to Big Springs over U. S. Highway 80, and T. & P. Motor Transport operates over U. S. Highway 80 from Fort Worth through Big Springs on beyond to Pecos, does it not?

A. Yes, sir.

Q. Now, if a shipper tendered a shipment to Johnson Motor Lines to transport to Big Springs, it would pay the same rate on that shipment as it would pay if it had tendered the shipment to the T. & P. Motor Transport, would it not?

A. That is correct.

Q. If the shipper tendered a shipment to Johnson Motor Lines to be transported to Pecos, and Johnson Motor Lines transported the shipment from Fort Worth to Big Springs and there interchanged the shipment with the T. & P. Motor Transport, that shipper would pay the same rate as
452 it would have paid if the shipment had been hauled all the way by T. & P. Motor Transport?

A. That is correct.

Q. Now, state whether or not the same rate would be charged to that shipper if the shipment were tendered to the T. & P. Motor Transport in Fort Worth, and the T. & P. Motor Transport carried the shipment to Pecos, partly by truck and partly by rail?

A. That is correct.

Q. That would be the same rate as the shipper would have paid if it had been transported in the first instance by Johnson Motor Lines and interchanged at Big Springs with the T. & P. Motor Transport?

A. That is correct.

Q. Now, if the shipper tendered a shipment in Fort Worth to the Agent of the T. & P. Motor Transport Company, who is likewise the Agent for the T. & P. Railway Company, without designating the means by which he wants the shipment transported, state what is your practice in issuing the bill of lading to him and what means of conveyance will be used?

A. Well, I have never had a case like that happen. We never encountered such a case. If the shipper is in doubt as to the service he desires, we always explain it to him, and the advantages of both, in the event there are different advantages. And he takes out the bill of lading ac-
453 cording to his choice of service.

Q. When a shipment is tendered to you at any point on your route by an independent common motor car-

rier, the rate which the shipper would have to pay would be based upon the tariff applying to the motor carrier?

A. That is absolutely correct.

Q. Even though it might subsequently move by rail?

A. That is correct.

Q. The T. & P. Railway Company and the T. & P. Motor Transport have no discretion whatever in that situation, do they?

A. No, sir, they do not.

Q. That is a question of the contract which is evidenced by the bill of lading issued to the shipper at the time the shipment is tendered to the carrier?

A. That is our practice and policy.

Exam. BORROUGHS: Any further cross examination?

Mr. BENSON: No, sir.

Exam. BORROUGHS: Re-direct?

Mr. LANCASTER: No, sir.

Exam. BORROUGHS: That is all, Mr. McDonald. Thank you.

(Witness excused.)

Exam. BORROUGHS: Does the petitioner have further evidence in this case?

Mr. LANCASTER: We have one more witness. I was going to ask you whether we should offer him now or if you were going to retire for lunch. Either one suits us all right. We would just as soon offer him right now.

Exam. BORROUGHS: We will take a five minute recess and then finish.

454 Exam. BORROUGHS: Proceed, gentlemen.

(Short recess.)

C. G. HAYES, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your name and address.

A. C. G. Hayes, of Dallas, Texas.

Q. What is your connection with the Transport Company and with the Texas & Pacific Railway Company and subsidiary lines?

A. I am the Traffic Vice-President of the Texas & Pacific Motor Transport Company, the Texas & Pacific Railway and its subsidiaries.

Q. You have for many years been engaged in traffic work for both of the lines which you mentioned?

A. That is correct.

Q. You are in charge of the traffic policies of those lines?

A. That is correct, sir.

Q. Basing your testimony on what has gone heretofore by Mr. Huffman, Mr. McDonald and Mr. Hughett, will you please proceed to state the considerations that affect the Transport Company and the Railway Company as well as other transportation agencies and the shipping public.

A. I should like to read into the record a statement I have.

It is technically possible for the Transport Company and the Texas & Pacific Railway between local points to establish joint rates in conformity with the rules adopted by the Tariff Department of the Commission. How-
455 ever, as has been shown, except for the special permission granted, it would be a practical impossibility to compile and publish and re-publish from time to time rates between the Railway or the Transport Company and other common carrier motor carriers, which rates are authorized by the Motor Carrier Act.

I feel that I may best serve the Commission by giving a brief resume of the operations of the Transport Company since it started motor carrier operations, so that the Commission may be acquainted with its service alone and in conjunction with other common carriers by motor vehicle.

The highway operations of the Transport Company were commenced in 1935 in the territory served by the Texas-New Mexico Railway, a subsidiary of the Texas & Pacific Railway, operating from Monahans, Texas, to Lovington, New Mexico, a distance of about 112 miles, an oil field territory where it was necessary to conform train schedules to the needs of the receivers of pipe and other oil well supplies, and the shippers of petroleum products, a train service which was not satisfactory for merchandise freight. This supplementary highway operation was found to be so satisfactory to the general public that it was gradually extended along the line of the Texas and Pacific, additional operating rights being secured either through purchase or application, until now the Texas & Pacific Motor Transport Company serves with its highway vehicles a substantial number of communities located on the
456 line of the Texas & Pacific Railway, handling both interstate and intrastate traffic.

The combination of train and truck service has proven of immeasurable benefit in providing expeditious service to shippers and receivers in the territory which the Texas & Pacific Railway has served for something over sixty years.

In 1939, out of a desire to afford these communities a rounded-out and complete transportation service, and of course also to secure additional traffic, the Transport Company concluded it should interchange traffic with other common carrier motor carriers, and arrangements were made to do so on intrastate traffic beginning in May, 1939, and on interstate traffic in August, 1939.

I believe the correct date was about July 25, actually.

This was by appropriate participation in the agency tariffs of common carrier motor carriers. This arrangement has proven beneficial to the people we serve, as well as to ourselves. It is in consonance with the views long urged by the Commission in Motor Truck and Bus Operation 140, I. C. C. 685, and in the Coordination of Motor Transportation 182, I. C. C. 263. Furthermore, and directly to the point, we have compiled precisely with Ex Parte 129, Substituted Freight Service 232, I. C. C. 683.

457 Thus, in the first case, as long ago as 1928, the Commission said:

> "Railroads, whether steam or electric, and water carriers, subject to the interstate commerce act, and their motor-carrier operations should be authorized, but not required by law at this time, to participate in joint rates and through routes with common-carriers motor-bus or motor-truck lines holding certificates of convenience and necessity from some regulatory body, and such rates should be made subject to the provisions of the interstate commerce act."

With the stabilization of motor carrier routes and rates growing out of passage of the Motor Carrier Act in 1935, the Texas & Pacific concluded that the time had come to follow the advice of the Commission.

By substituting rail for highway service the Transport Company is enabled to take advantage of space in regularly operated merchandise cars which would otherwise be unused, and at the same time by using highway service for its own traffic or substituting highway for rail service on railroad traffic, is enabled to expeditiously and economically handle merchandise traffic when it is offered at times of the day when it is not practicable to operate freight trains because of the relatively small volume of such traffic offered.

458 Mr. Benson: We object to Paragraph 3, contained on Page 4 of the statement just about to be given by the witness, because it is a self-serving declaration and is a conclusion upon the part of this witness.

Mr. LANCASTER: We have no objection to eliminating that. I thought it was out. Skip the next paragraph, please, sir.

The WITNESS: I will cross it out.

Generally speaking, the less-than-truckload rates of the common carrier motor carriers, to which the Texas & Pacific Motor Transport Company and the Texas & Pacific Railway are parties, are the same as the less-than-carload rates of rail carriers. It is true that the tariffs of the motor lines carry so-called volume rates, say for minimums of 10,000 or 14,000 pounds, which traffic if moved under all-rail tariffs, would be at less-than-carload rates in most cases. Where volume rates are joined in it is simply to meet the rates available via other common carriers to and from our territory; and the circumstances that occasionally traffic moving under these rates is handled in merchandise cars of the Railway in substitution for highway services is unimportant to the shipper, receiver, or to our connecting motor carriers.

The interchange arrangement has proven highly satisfactory to our company, common carrier truck lines with whom we interchange are apparently satisfied with it, as they have made no complaints to us, and the jobbers
459 and merchants in the territory served are likewise satisfied. We have had no complaints from any source since the practice was inaugurated in May, 1939.

Briefly stated, it is our view that the Texas & Pacific Railway, either directly or through subsidiary organizations, should have the privilege of providing the communities in the territory which it has served for so many years with a rounded-out transportation service to satisfy as nearly as may be practicable their needs.

We understand the Interstate Commerce Commission is in doubt as to the propriety of the method of tariff publication under which we perform this service; that is, by a substitution of rail for highway service in certain areas of our highway operations through publication of a directory, of which the Texas & Pacific Railway is a party, and listing the points between which we will substitute rail for highway transportation. This is the best method we have been able to devise for publication to cover the arrangement. It is simple, easy to understand, and has been made familiar to the shipping and receiving public through the publication of a similar directory by the rail carriers authorizing the substitution of highway for rail service.

Incidentially, the rights of the Texas & Pacific Motor Transport Company are those of a common carrier by

motor vehicle and it has undertaken, as enjoined by
460 its certificates, to comply with Section 217 of the Motor Carrier Act and at the same time to observe restrictions placed upon its operating rights, which restrictions were designed to insure that service would be auxiliary and supplemental to its affiliated railway companies.

Existing tariffs come as near as possible to joining the Railway Company in motor carrier rates and do so to the extent necessary to permit the Transport Company to engage in operations of the character indicated. If one or more tariff rules, as distinguished from legal requirements, are to be infringed upon, we feel it is proper for the Commission to continue the special permission to publish tariffs as they are now published.

We submit, therefore, that our composite rail and highway operation is of important benefit to the Railway, the Transport Company, our connecting motor carriers, and to the merchants, jobbers and other receivers and shippers of freight in the territory served, and that none of the parties thus benefited should be deprived of such benefits through any technicalities of tariff publication; and if the Commission feels our present publication is improper, it should devise some other equally simple and economical method of providing proper publication.

Exam. Borroughs: Does that complete the direct of this witness?

461 Mr. Lancaster: Yes, sir, that is all.

Exam. Borroughs: Cross examine.

Mr. Benson: I have nothing.

Mr. Daly: We have nothing.

Exam. Borroughs: You are excused, Thank you, sir.

(Witness excused.)

Mr. Lancaster: I would like to recall Mr. Hughett back a moment, please.

J. D. Hughett was recalled and testified further as follows:

Direct Examination:

Q. (By Mr. Lancaster) Mr. Hughett, you are in charge of the tariff publishing activities of the Southwestern Motor Freight Bureau, Inc.?

A. That is right.

Q. Could you estimate with reasonable accuracy what it would cost if your tariffs were duplicated by another party.

having in mind that the Texas & Pacific Railway would be the duplicating agent?

A. Of course, that is all we do do in principal, is the publication of rates, and we estimate the best that I can figure that to compile the tariff and have it printed and distributed it costs us about $8.00 per page.

Q. You distribute copies of your tariff to each of the carriers named therein and to other tariff publishing agencies?

462 A. And the shipping public.

Q. Could you approximate the cost over-all of doing that work, assuming that the same cost would be incurred by another agency?

A. I would say that that cost would be not less than that, and possibly more, unless they specialized in it.

Q. Would you have any objection to giving what the figures are for a year or for any representative period in dollars and cents?

A. Under the new Commission's tariff rules, the average tariff will be required to be reissued in any period from nine to twelve months, and most of those will have used up their 33⅓ per cent supplemental space in that length of time, and, to estimate this, you would have to take your total number of pages of tariff matter—I would—multiply it by eight and estimate the number of supplemental pages that would be required, and multiply that by eight.

Q. (By Exam. Borroughs) We are not interested in the procedure underlying your estimate. Can you give us an estimate, or not?

A. I can give you the estimate as to the page, and then the requirement as to the number of pages is problematical, because it depends on the supplement.

Q. You have already indicated the amount per page?

A. That is right.

Q. (By Mr. Lancaster) Are you able to say what

463 part of the cost, and the amount thereof of your organization is taken up by the publication of tariffs?

A. I say that that $8.00 per page is there all of the time.

Q. The aggregate cost of the year's period, say. If you are not able to estimate, I don't—

A. It costs approximately $50,000 a year to operate Southwestern Motor Freight Bureau, and we have had a maximum of twelve employees and operate anywhere from eight to twelve, and we could not, of course, publish all of the rates that you people are participated in, with the force that we have. I would estimate it would take a force

of not less than thirty people, and possibly as many as forty, to publish the material that you people are now participated in and published by ourselves, and the Rocky Mountain Bureau, at Denver, and the Middle West Motor Freight Bureau, at Kansas City, and the Southern Motor Rate Conference, at Atlanta, Georgia.

Mr. LANCASTER: I believe that is all.

Exam. BORROUGHS: Any further questions?

Mr. BENSON: No, sir.

Exam. BORROUGHS: You are excused, Mr. Hughett. Thank you, sir. Does that complete your case, Counsel for Petitioner?

(Witness excused.)

Mr. LANCASTER: Yes. I would like to go off the record for just a moment, please, to ask a man about—no, that is all right. Yes, that completes our case.

464 Exam. BORROUGHS: Any evidence for intervenors in this proceeding?

Mr. DALY: No, sir.

Mr. BENSON: No, sir.

Exam. BORROUGHS: Any statements, or motions? Is oral argument requested before this Examiner?

Mr. LANCASTER: We would like to be granted relief without it.

(Discussion off the record.)

Exam. BORROUGHS: At this time, gentlemen, before concluding this hearing, let me again direct attention of Counsel for the Petitioner to the Order of the Commission which has set this for hearing, the petition of applicant for orders defining its rights under certain certificates or for alternate relief. Do you have anything further to say, Counsel?

Mr. LANCASTER: I would like to add this to the statements and to the evidence which has been introduced here this morning: I stated at the outset of the hearing that we were not asking for a change in our operating restrictions, but to the extent that it might be considered necessary as a tariff prerequisite to change our operating certificates; we would like to ask that they be modified by appropriate words, without changing our operating rights under them, so that it would be clear that the Transport Company may continue a party to the rates to which it is now party

465 and may substitute rail service of the Railroad Company in conjunction with those rates. We have regarded restrictions, especially the prior and subsequent rail haul restrictions, as pertaining to our operations, and not as pertaining to tariff obligations which we feel free to

assume under the Motor Carrier Act and under advice of the Commission in prior proceedings, the names of two of the outstanding of which have been cited by our witness, Mr. Hayes.

I should also like at this time to ask that, if it is found impossible, either by modification of tariff rules or continuance of the special permission, to contravene certain of the ordinary rules, and also impossible to specifically say that our certificates shall not be construed as forbidding what we are now doing, I would like to ask that we be afforded further temporary authority pending appropriate applications to otherwise modify the certificates under which the Transport Company operates.

Exam. Borroughs: Any statements in connection with statement of Counsel Lancaster?

Mr. Benson: We would object to the increasing in any manner of the operating rights now held by the Texas & Pacific Motor Transport Company.

Exam. Borroughs: Counsel, do you want to say something further?

Mr. Lancaster: Yes. I wanted to ask Counsel if
466 he would have any objection to the Commission merely writing into the certificates involved that they should not be construed to prohibit the interchange arrangements which are now going on.

Mr. Benson: No objection, providing that does not enlarge the operating rights of the Texas & Pacific Motor Transport Company.

Mr. Lancaster: That is right.

Mr. Benson: As it now has.

Exam. Borroughs: Your request, which will be considered a motion, will be taken under advisement, Counsel, and given due consideration by the Commission, as are the statements by other counsel in connection therewith.

Mr. Daly: May I ask that the record show that I join in the first part of the motion of Mr. Lancaster, wherein he asked that petitioner be permitted to continue operating in the future as it has operated in the past and be permitted to be a member of the same tariff as the independent common carriers?

And I further join in that part of his motion wherein Counsel for Petitioner requested that the Commission add a provision to the certificates of the Texas & Pacific Motor Transport Company granting to the Petitioner authority to continue interchanging freight with other common carrier

motor carriers and being a member of the same tariff, and making that change in their certificates by amend-
467 ment; but do not join in the latter part of Mr. Lancaster's motion wherein he asked for an additional hearing or further hearing.

Exam. BORROUGHS: Let the record show that all parties who have not committed themselves with respect to their position in this matter at this time indicate for the record that they are appearing as interveners, and their appearances will be shown as such.

Are briefs to be filed in this case?

Mr. LANCASTER: I should like to ask whether this is to be a proposed report case or not.

Exam. BORROUGHS: I am unable to answer that question.

Mr. LANCASTER: Might it be understood that, if it is not to be a proposed report case, we will then be given an option of filing briefs? What I have in mind, if it is a proposed report case and there are any conclusions expressed in that to which we can not assent, then we would like a right to except to the report. Otherwise, I don't think that we care to file briefs. I think it is clear.

Mr. DALY: I join in that motion, Mr. Examiner.

(Discussion off the record.)

Exam. BORROUGHS: Do I understand, Counsel, that if there is not a proposed report or recommended report issued in this proceeding, you do not care to file briefs, but that if there is such a report issued and served, you desire to have an opportunity to file exceptions and briefs
468 in connection therewith, as is the usual custom?

Mr. LANCASTER: Yes, sir; it being my thought that, if an opinion is handed down by the Commission without a proposed report that offends what we conceive to be our interest, a petition for reconsideration would probably be entertained.

Exam. BORROUGHS: The position of all counsel will be shown of record. As there is no request for a brief date in this proceeding, none will be set. If there is nothing further, the hearing is closed.

Thank you very much, gentlemen.

(Whereupon, at 12:40 o'clock P. M., the hearing was closed.)

470 *Exhibit No. 2*

Witness Huffman

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
STATEMENT SHOWING NUMBER OF POUNDS OF FREIGHT INTERCHANGED WITH COMMON CARRIER MOTOR CARRIERS FOR YEAR 1941

Year	*Month*	*No. Lbs. Received*	*No. Lbs. Deld.*	*Increase in Lbs. over same month in previous year*
1941	Jan.	848,988	544,332	735,265
"	Feb.	711,369	563,352	341,664
"	March	701,519	687,253	374,562
"	April	867,805	598,587	495,607
"	May	888,214	584,194	317,343
"	June	754,815	607,254	528,331
"	July	695,436	588,306	340,735
"	Aug.	698,210	597,134	395,705
"	Sept.	845,110	580,732	416,238
"	Oct.	1,004,443	673,629	315,791
"	Nov.	867,923	563,228	490,161
"	Dec.	990,362	649,693	508,165
	Totals	9,874,194	7,237,694	5,669,567

471 *Exhibit No. 3*

Witness McDonald

I. C. C. DOCKET NO. MC-50544
AND SUBS. 1, 2, 3, 4, 7, 9, 10, 14.

EXHIBIT NO. .....
(Consisting of 315 Pages)

WITNESS .....

THREE HUNDRED FIFTEEN REVISED PAGES OF SUPPLEMENTAL MATTER TO
ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., AGENT,
TRANSCONTINENTAL MOTOR FREIGHT TERRITORIAL DIRECTORY NO. 1, M. F.-I. C. C. NO. 12,
SCHEDULED TO BECOME EFFECTIVE
FEBRUARY 24, 1942.

472

I.C.C. DOCKET NO. MC-99544
AND SUBS. 1, 2, 3, 4, 7, 9, 10, 14.

EXHIBIT NO. 3

WITNESS McBrayer

STATEMENT OF TARIFFS TO WHICH THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY IS A PARTY NAMING RATES, RATINGS, RULES AND REGULATIONS GOVERNING TRANSPORTATION OF PROPERTY BY MOTOR VEHICLE IN INTERSTATE OR FOREIGN COMMERCE

-1-

Tariffs	Application	Number of Pages Effective As of Feb. 11, 1942, Except Where Otherwise Indicated
Southwestern Motor Freight Bureau, Inc. Tariff No. 1-B, Agent J. D. Hughett's MF-I.C.C. No. 81.	Rates on classes and commodities between Louisiana, New Mexico, Oklahoma and Texas, on one hand, and Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Memphis, Tenn., Natchez, Miss. and Vicksburg, Miss., on the other, also between Arkansas and Natchez and Vicksburg, Miss.	365 (Effective Feb. 28, 1942)
Southwestern Motor Freight Bureau, Inc. Tariff No. 3-B, Agent J. D. Hughett's MF-I.C.C. No. 82.	Commodity rates on export, import, coastwise, intercoastal and intracoastal traffic between Beaumont, Corpus Christi, Galveston, Houston and Texas City, Tex., on the one hand, and Texas points, including Lake Charles and Shreveport, La. and Texarkana, Ark., on the other.	75
Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Freight Tariff No. 29, MF-I.C.C. No. 73.	Rates on classes and commodities between stations in Indiana, Kentucky Michigan, New York, Ohio, Pennsylvania, Virginia and W. Virginia, on one hand, and stations in Arkansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas, on the other.	644
Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Freight Tariff No. 32, MF-I.C.C. No. 83.	Rates on classes between stations in Illinois, Indiana, Iowa, Missouri, and Wisconsin, also Paducah, Ky., on one hand, and stations in Arkansas, Louisiana, New Mexico, Oklahoma and Texas on the other.	617
Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Freight Tariff No. 40, MF-I.C.C. No. 105.	Rates on classes between points in Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin, on one hand, and points in Arkansas, Louisiana, New Mexico, Oklahoma and Texas, on the other.	376
Southern Motor Carriers Rate Conference, Agent, Motor Freight Tariff No. 5-C, MF-I.C.C. No. 184.	Rates on classes and commodities between stations in Arkansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas, on one hand, and stations in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and W. Virginia, on the other.	537 (Effective Feb. 28, 1942)
Rocky Mountain Motor Tariff Bureau, Inc., Agent, Transcontinental Motor Freight Tariff No. 5, MF-I.C.C. No. 6.	Class rates between points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington on one hand, and points in the U.S., on the other.	213
Rocky Mountain Motor Tariff Bureau, Inc., Agent, Transcontinental Commodity Tariff No. 6, MF-I.C.C. No. 11.	Commodity rates between points in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, Washington and Montana, on one hand, and points in the U.S., on the other.	778
The Texas and Pacific Motor Transport Company Freight Tariff No. 5, MF-I.C.C. No. 1	Commodity rates between Dallas, Tex. and Fort Worth, Tex.	14
Southwestern Motor Freight Bureau, Inc. Official Station List No. 1, Agent J. D. Hughett's MF-I.C.C. No. 49.	Naming in alphabetical and geographical order points in States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas, also Natchez and Vicksburg, Miss. and Memphis, Tenn. on lines of participating carriers; also points at which interchange is made with other carriers.	283 (Effective Feb. 15, 1942)
National Motor Freight Classification No. C-F. Jackson, Agent, MF-I.C.C. No. 9. I.C.C. No. 9.	Ratings, rules and regulations.	954
Western Classification No. 69, Agent R. C. Fyfe's MF-I.C.C. No. 5, I.C.C. No. 27.	Ratings, rules and regulations.	574
Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Rules and Exceptions Tariff No. 4, MF-I.C.C. No. 113.	Naming ratings as exceptions to the National Motor Freight Classification; also rules and regulations governing tariffs made subject thereto.	219 (Effective Feb. 14, 1942)
Southwestern Motor Freight Bureau, Inc. Distance Table Tariff No. 11, J. D. Hughett, Agent, MF-I.C.C. No. 85.	Short line distances between points in Texas.	31
Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Mileage Table No. 1, MF-I.C.C. No. 1.	Naming distances in miles between stations in Arkansas, Colorado, Illinois, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma and Texas; also between said points and Natchez, Miss., Paducah, Ky., Vicksburg, Miss. and Memphis, Tenn.	829
Rocky Mountain Motor Tariff Bureau, Inc., Agent, Transcontinental Motor Freight Territorial Directory No. 1, MF-I.C.C. No. 12.	Containing list of points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, showing rate basis applicable on traffic from and to various points in the U.S. in connection with tariffs making reference thereto.	327
Motor Carriers' Explosives and Dangerous Articles Tariff No. 4, C. F. Jackson, Agent, MF-I.C.C. No. 11, I.C.C. No. 11.	Regulations for transportation of explosives and other dangerous articles, including specifications for shipping containers.	191
Agent W.S. Topping's Freight Tariff No. 4, I.C.C. No. 4, MF-I.C.C. No. 2.	Regulations for transportation of explosives and other dangerous articles, including specifications for shipping containers.	224
Southwestern Motor Freight Bureau, Inc. Substituted Freight Service Directory No. 1-D, J.D. Hughett, Agent, I.C.C. No. 5, MF-I.C.C. No. 80.	Naming regulations authorizing substitution of rail service for motor carrier service.	10
National Substituted Freight Service Directory No. 1-A, Agent L. E. Kipp's I.C.C. No. A-3245, MF-I.C.C. No. A-85.	Naming regulations authorizing substitution of motor carrier service for rail service.	102

Total Number of Tariffs 20
Total Number of Pages 6,948

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Continued from previous exposure from approximately this point

473 Interstate Commerce Commission

No. MC-50544[1]

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

Submitted February 11, 1942 Decided January 21, 1943

Operating rights under certificates authorizing operation as a common carrier by motor vehicle of property, in interstate or foreign commerce, in performing a service which is auxiliary to or supplemental of rail service, defined. No order entered but carrier admonished to correct its practices within a reasonable time. Prior reports as shown in the appendix.

S. W. Lancaster and W. O. Reed for petitioner.

Scott Daly, Reagan Sayers, W. D. Benson, Jr., C. M. Mulholland, J. D. Hughett, and F. H. Lynch, Jr., for interveners.

Other appearances shown in prior reports.

Report of the Commission

Division 5, Commissioners Lee, Rogers, and Patterson

By Division 5:

Following its report in *Substituted Freight Service*, 232 I. C. C. 683, the Commission granted a number of applications for special permission authorizing departures from its tariff rules to enable the publication of schedules providing for the substitution of rail for motor service. Special Permission R-M No. 2418, of February 6, 1940, requires the publication of the following provisions:

> Unless the shipper directs that the rail carrier service shall not be performed, the motor carriers parties hereto may, at their option, substitute rail service between the points and via the rail carriers shown herein, for their actually available services via highways for which such motor carriers have lawful operating rights as common carriers via motor vehicle.
>
> When substitution service is performed under provisions of this tariff in connection with rates published in tariffs making specific reference hereto, the rates

[1] Other proceedings embraced in this report and citations to the prior reports are contained in the appendix.

named in said tariffs will apply in connection with the carriers named in this tariff.

Thereafter, by successive amendments, the authority granted by Special Permission R-M No. 2418 was modified so as not to extend, beyond August 19, 1941, to any common carriers by motor vehicle whose certificates of public convenience and necessity limit their operations to service
474 between stations on the lines of common carriers by rail, which is auxiliary or supplementary to the service of the rail carriers and to transportation to be performed by the motor carrier which is a part of through transportation in connection with a prior or subsequent movement by the rail carrier. The special permission, however, was extended beyond August 19, 1941, for the account of The Texas and Pacific Motor Transport Company and to continue until the final determination of a petition to be filed by that carrier seeking an interpretation of its operating rights. The petition was filed, and the matters presented in the petition were assigned for hearing, with a view to the issuance of such orders and the taking of such further action as may be appropriate upon the record made at the hearing. The hearing has been held. Certain motor carriers, Railway Labor Executives' Association, and Southwestern Motor Freight Bureau, Inc., intervened to protect their interests.

The petition is captioned "Petition of The Texas and Pacific Motor Transport Company for orders defining its rights under certain certificates, or for alternative relief" and contains the following prayer:

> The Commission is requested to direct its officers to accept, file and maintain the directory published by the Transport Company, and to issue instructions to the effect that the Transport Company shall be accorded equal rights with other common carriers, of filing and maintaining tariffs.
>
> As an alternative, the Transport Company and The Texas and Pacific Railway Company request the Commission to provide some reasonable method by which they may continue to join in the rates to which they are presently parties.

At the hearing counsel for petitioner stated that the petition was filed to obtain a clarification of petitioner's rights under existing tariff rules of the Commission and that it does not here seek the removal of or a change in any of the present restrictions or conditions in its certificates.

However, if these restrictions or conditions are found to prevent participation by petitioner in tariffs in substantially the same manner as it now participates therein, it asks the Commission to afford it a further hearing for the purpose of showing that its certificates should be amended. The primary interest of motor-carrier interveners is stated to be to prevent removal of the restrictions or conditions attached to petitioner's certificates. They do not object to the interchange of traffic by petitioner with independent motor carriers provided such interchange does not involve a removal of any of the conditions or restrictions contained in the certificates. The Railway Labor Executives' Association's interest is in maintaining condition 3 in the certificates.

Petitioner is a wholly-owned subsidiary of the Texas and Pacific Railway Company, hereinafter called the Railway. Petitioner's certificates, issued under the provisions of section 207(a) of the Interstate Commerce Act, authorize operations, in interstate or foreign commerce, as a common carrier of property by motor vehicle, between numerous points which are stations on the rail lines of the Railway, subject to certain conditions. In general, the certificates contain the following conditions:

475 1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company.

2. Applicant shall not serve, or interchange traffic at, any point not a station on the rail line of The Texas and Pacific Railway Company.

4. All contractual arrangements between applicant and The Texas and Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as it is found to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

Certain of these certificates which authorize operations between New Orleans and Shreveport, La., between Marshall, Texas, and Texarkana, Texas-Ark., and between Big Spring, Texas, and Pecos, Texas, also contain the following additional condition:

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to The Texas and Pacific Railway Company under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

Petitioner is a party to tariffs containing all-motor local rates and all-motor joint rates with connecting motor carriers. It and the Railway are parties to Substituted Freight Service Directory No. 1-D, J. D. Hughett, Agent, I. C. C. No. 5, MF-I. C. C. No. 80 which, under Special Permission R-M No. 2418, provides for the substitution of rail service for motor vehicle service, at the option of the petitioner, between all points the petitioner is authorized to serve on the rail lines of the Railway including those points where the petitioner's operating authority is limited to the transportation of shipments which involve, in addition to movement by the petitioner by motor vehicle, a prior or subsequent movement by rail. The all-motor tariffs contain a provision making shipments handled thereunder subject to the provisions of the Hughett directory and the rates named in the all-motor tariffs are made to apply where substituted service as authorized in the Hughett directory is performed. Accordingly, the rates named in the all-motor tariffs apply on shipments handled by petitioner (1) wholly by truck, or (2) wholly by train or (3) partly by truck and partly by train in substituted train for truck service, except shipments moving to, from, or through certain points the petitioner is authorized to serve under certificates containing a prior or subsequent rail haul Condition 3. To the extent the petitioner's operating authority is so limited, the all-motor tariffs contain a provision that the rates
476 therein apply on shipments handled by the petitioner only when they involve a prior or subsequent movement by rail. The maintenance of this provision and its observance through the substitution of rail for motor service, petitioner contends, bring its service within the requirements of Condition 3. The petitioner overlooks the fact that Special Permission R-M No. 2418 does not permit the substitution of rail for motor service where the motor carrier may not perform the movement entirely by motor vehicle. Petitioner and the Railway are also parties to National Substituted Freight Service Directory No. 1-A, Agent L. E. Kipp's I. C. C. No. A-3245, MF-I. C. C. No.

A-85, which provides under special permission, for the substitution of motor vehicle service for rail service at the option of the Railway and other railroad parties to the tariff.

Thus it appears that the petitioner is engaging in operation as a common carrier by motor vehicle performing the same kind and character of service as is performed by motor common carriers generally. It holds itself out to, and transports shipments moving wholly by motor vehicle between points on its lines and between points on its lines and points on the lines of other motor carriers under bills of lading issued by the petitioner and it participates in and collects all-motor rates. This service is the same as the service rendered by a motor carrier which is not performing a service auxiliary to, or supplemental of, rail service. The petitioner also performs a substituted service for the Railway. The tariffs also provide that the rail service of the Railway may be substituted for petitioner's service by motor vehicle.

To summarize, the tariffs of the petitioner and the Railway provide for the following:

1. Local truck service by the petitioner at truck rates on truck bills of lading;
2. Joint truck service by the petitioner and connecting motor carriers at joint truck rates on truck bills of lading;
3. Substitution of rail service for petitioner's truck service at truck rates on truck bills of lading;
4. Substitution of petitioner's truck service for rail service at rail rates on rail bills of lading.

Petitioner takes the position that its certificates do not preclude it from publishing such tariffs or from rendering the services for which they provide. It urges that Condition 1 cannot be construed to restrict it to the handling of shipments moving on rail billing and at rail rates, because, if this had been the intent, such intent would have been expressed in clear and definite terms and that although Conditions 1, 2, and 3 restrict its operations "in the particulars set forth therein", they nevertheless leave it a common carrier by motor vehicle, free to operate and entitled to all rights as such under the act. It argues that to say it has no right to publish tariffs holding itself out as a common carrier and providing for subsequent movement by rail of freight originated or received in interchange by it ignores the provisions of Condition 3, and also nullifies Condition 2 which provides that petitioner shall not serve, *or*

interchange traffic at, any point not a station on the rail line of the Railway. It urges that if it is confined to
477 handling so-called "railroad traffic" the condition is meaningless because it could not possibly interchange traffic at any place except points on the rail lines of the Railway. Other circumstances which petitioner believes to be controlling are that it has been granted certificates as a common carrier by motor vehicle which is defined as one holding itself out to the general public to engage in interstate transportation by motor vehicle for compensation and which is required to comply with the provisions of section 217 of the act calling for the filing and maintaining of tariffs, a duty which it asserts could probably not be discharged merely by operations under a railroad tariff.

The certificates granted petitioner were predicated upon a showing that public convenience and necessity require operation by it for the purpose of bringing about an improvement in the rail service of the Railway in the movement of less-than-carload merchandise traffic to and from small way-stations which were without through-train service. This improvement was to be accomplished through the use of trucks, instead of cars moving in way-freight trains, as a substitution of a more efficient for a less efficient *means* of service. The traffic is so-called package or merchandise freight in less-than-carload quantities which the Railway then was and had been under an obligation to transport and which it would continue to transport whether we granted or denied the applications. *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5. There was no need for another motor carrier to furnish service such as that supplied by existing motor carriers which have no close relation to the operations of the Railway. Accordingly, petitioner was granted certificates subject to conditions which were imposed for the purpose of so limiting its service as to prevent it from engaging in motor vehicle operations unconnected with any rail service. The need for improvement in the rail service of the Railway not only forms the basis for the conditions imposed but is the basis upon which operating authority was granted to the petitioner, rather than requiring the Railway, if the improvement in its service were to be accomplished, to utilize the service of existing motor carriers. Without this need for improvement in the rail service there would have been no public need warranting the granting of the certificate.

There was no public need for another motor carrier in the field nor for the Railway, through petitioner, to engage in a new field of service.

Condition 1 limits the character of service to be performed by the petitioner to that which is auxiliary to or supplemental of the rail service of the Railway. It limits the service to be performed by truck to the transportation of the rail traffic of the railway. It permits the public to receive an improved rail service through the use of trucks instead of trains as a *means* of fulfilling the Railway's undertaking to transport. Petitioner's status as a common carrier by motor vehicle is not dependent upon its having direct dealings with the shipping public. *Willett Co. of Indiana, Inc., Extension-Ill., Ind., and Ky.* 21 M. C. C. 405. Its service is necessarily limited to points served by the Railway, hence Condition 2. Condition 1 permits all-motor movements in the handling of rail traffic at railroad rates and on railroad bills of lading. To and from certain points on segments of the rail lines the improved service was to be accomplished by performing the movements partly by train and partly by motor vehicle, an auxiliary or supplemental service coordinated with the train service, hence Condition 3. Since petitioner's certificates limit the service to be performed to that which is auxiliary to or supplemental of the rail service of the Railway, it is without authority to engage in operations unconnected with the rail service and, accordingly, may not properly be a party to tariffs containing all-motor or joint rates, nor par-
478 ticipate in a directory providing for the substitution of train service for motor vehicle service at its option. To the extent petitioner is performing or participating in all-motor movements on the bills of lading of a motor carrier and at all-motor rates, it is performing a motor service in competition with the rail service and the service of existing motor carriers, and to the extent it is substituting rail service for motor vehicle service, the rail service is auxiliary to or supplemental of the motor vehicle service rather than the motor vehicle service being auxiliary to or supplemental of rail service.

There is another reason why petitioner may not properly be a party to Agent Hughett's substitution directory. Special Permission R-M No. 2418 does not permit the substitution of rail service for motor vehicle service where the motor carrier may not perform the movement entirely by motor vehicle. The substituted rail service must be in lieu of the motor carriers' "actually available services via

highways for which such motor carriers have lawful operating rights as common carriers via motor vehicle". To the extent petitioner's certificates contain Condition 3 the shipments which it is authorized to handle must move partly by railroad and partly by motor vehicle. It has no authority to perform the movement entirely by motor vehicle and hence the substituted rail service is not in lieu of petitioner's actually available services over highways for which it holds operating authority.

Both in its local service and in connection with shipments interchanged with other motor carriers petitioner substitutes rail service for motor service in the movement of many shipments. This is said to be done in all cases where the resultant service is more efficient and economical and is done without fail where the certificate provisions limit the shipments to be handled over certain routes to those having a prior or subsequent movement by rail. The tariff arrangements for the substitution of rail for motor service are said to have been in effect since 1939 and to have operated to the material benefit of petitioner, its affiliated rail companies, interchanging truck lines, and the general public. Petitioner shows that during 1941 the volume of traffic interchanged with connecting motor carriers amounted to approximately 17,000,000 pounds, of which some 9,800,000 pounds were received from and some 7,200,000 pounds delivered to connecting truck lines. While considerable, the volume of such traffic has no bearing on the issues presented.

We find, that to the extent petitioner holds certificates limiting the motor vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is without authority to perform service under all-motor local and all motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service.

No affirmative order will be entered at this time but petitioner will be expected, within a reasonable time after the service of this report, to bring its service and tariffs in line with the foregoing finding.

If petitioner desires authority to perform an unrestricted motor vehicle service over the routes and between the points for which it now holds limited certificates to the extent indicated above, the proper procedure is to file a petition for further hearing on its ap-

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plications to the extent indicated for the purpose of establishing that such service, by petitioner, is or will be required by public convenience and necessity.

Commissioner PATTERSON did not participate.

By the Commission, division 5.

(Seal)

W. P. BARTEL,
Secretary.

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APPENDIX

Proceedings embraced in report and citations to prior reports.

No. MC-50544

The Texas and Pacific Motor Transport Company Common Carrier Application. Prior report 12 M. C. C. 37.

No. MC-50544 (Sub-No. 1)

The Texas and Pacific Motor Transport Company Common Carrier Application—Louisiana. Prior reports 10 M. C. C. 525 and 30 M. C. C. 487.

No. MC-50544 (Sub-No. 2)

The Texas and Pacific Motor Transport Company Extension—Willis Point—Gladewater, Texas. Prior reports 14 M. C. C. 645, 30 M. C. C. 487 and 31 M. C. C. 500.

No. MC-50544 (Sub-No. 3)

The Texas and Pacific Motor Transport Company Extension—Big Spring—Pecos, Texas. Prior reports 14 M. C. C. 649 and 30 M. C. C. 487.

No. MC-50544 (Sub-No. 4)

The Texas and Pacific Motor Transport Company Extension—Marshall—Texarkana, Texas. Prior reports 20 M. C. C. 593 and 30 M. C. C. 487.

No. MC-50544 (Sub-No. 7)

The Texas and Pacific Motor Transport Company Extension of Operations—Alternate Routes. Prior report 31 M. C. C. 1.

No. MC-50544 (Sub-No. 9)

The Texas and Pacific Motor Transport Company Extension of Operations—Mesquite—Forney, Texas. Prior report 23 M. C. C. 824.

No. MC-50544 (Sub-No. 10)

The Texas and Pacific Motor Transport Company Extension—Big Spring—Hobbs. Prior report 30 M. C. C. 465.

No. MC-50544 (Sub-No. 14)

The Texas and Pacific Motor Transport Company Extension—Fort Worth, Texas. Prior report 30 M. C. C. 852.

483 Before the
Interstate Commerce Commission

No. MC-50544[2]

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

Petition in Behalf of Applicant of The Texas and Pacific Railway Company for Reconsideration and Oral Argument; for Modification of Supplement No. 5 to Tariff Circular No. 20 and Specified Special Permission; or for Further Hearing—May 20, 1943

Come now The Texas and Pacific Motor Transport Company, applicant in the proceedings listed on the cover page hereof and hereinafter referred to as applicant or the transport company, and The Texas and Pacific Railway Company, hereinafter called the railway, and file this their petition for reconsideration by the Commission of the findings of Division 5 in its report of January 21, 1943 (mimeographed); for oral argument; for modification of Supplement No. 5 to Tariff Circular No. 20 and for specified special permission; or for further hearing in each of
484 the said proceedings. In support of the said petition they[3] respectfully say:

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[2] The instant petition embraces the proceedings listed on the cover page. As there stated, all of them except Nos. MC-50544 (Sub-No. 11), MC-50544 (Sub-No. 19), MC-50544 (Sub-No. 21-TA), MC-50544 (Sub-No. 24-TA), and MC-50544 (Sub-No. 30-TA), are included in the report of Division 5 under date of January 21, 1943, hereinafter discussed at length, which is the immediate cause for the filing of this petition.

[3] The railway is not technically a party to these proceedings. The prayer in its behalf for modification of Supplement No. 5 to Tariff Circular No. 20 and for specified special permission, is in a sense auxiliary to these proceedings, or additional, and for that reason we do not pray herein for leave in its behalf to intervene. If it be the sense of the Commission that such leave is required, however, we ask that this petition be regarded as containing a prayer for such leave.

History of the Proceedings

For a better understanding of our contentions hereinafter advanced, it becomes necessary preliminarily to set forth in detail the findings handed down by Division 5 in each of these cases. This we now do, listing the applications in their numerical order, with the added explanation that in each application the prayer is for authority to transport general commodities in motor common carriage in interstate or foreign commerce, the only difference between the several applications being one of territory.

In No. MC-50544, filed February 10, 1936, applicant sought the described authority between Monahans, Tex., and Lovington, N. Mex., with service at all intermediate points and at Wink, Tex., and Eunice, N. Mex., as off-route points. In its decision of March 2, 1939 (12 M. C. C. 37), Division 5 found that public convenience and necessity required the specified operation by applicant, but it imposed the following conditions:

> (1) The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas-New Mexico Railway Company [a subsidiary of the Texas and Pacific Railway Company, of which applicant also is a wholly owned subsidiary], hereinafter called the railway;
>
> 485 (2) Applicant shall not serve, or interchange traffic at, any point not a station on the rail line of the railway;
>
> (3) All contractual arrangements between applicant and the railway or the Texas and Pacific Railway Company, shall be reported to us and shall be subject to revision, if and as we find it necessary, in order that such arrangements shall be fair and equitable to the parties; and
>
> (4) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

In No. MC-50544 (Sub-No. 1), filed March 25, 1937, applicant sought to operate over a number of described routes, all of them between Shreveport and New Orleans, La., with service only at those points lying on the line of the railway. In its decision of December 2, 1938 (10 M. C. C. 525), Division 5 authorized the operation but imposed five separate conditions. The first, second, fourth, and fifth of these corresponded to those, just above quoted, which the Divi-

sion subsequently imposed in No. MC-50544, but in addition it imposed a third condition, hereinafter usually called Condition No. 3,[4] reading as follows:

> Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

486 In its report of September 4, 1941 (30 M. C. C. 487), on reconsideration of No. MC-50544 (Sub-No. 1), which also embraced Sub-Nos. 2, 3, and 4, the Division modified Condition No. 3 by changing the period at the end to a comma and adding the words, "and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules." This modification is of no particular consequence so far as the instant petition is concerned, and we mention it only in order that the chronology may be complete.

In No. MC-50544 (Sub-No. 2), filed October 19, 1937, applicant sought to operate between Wills Point and Gladewater, Tex., with service at all intermediate points. The Division authorized this operation (14 M. C. C. 645) but imposed Conditions Nos. 1 and 3. Condition No. 3 was subsequently modified, as hereinabove mentioned, in 30 M. C. C. 487; and still later, by its report of December 31, 1941, on further reconsideration (31 M. C. C. 500), the Division entirely eliminated Condition No. 3.

In No. MC-50544 (Sub-No. 3), filed October 26, 1937, applicant sought to operate between Big Spring and Pecos, Tex., with service at all intermediate points. Division 5 granted the prayer of the application (14 M. C. C. 649) but once more imposed Conditions 1 and 3, which are still effective except as Condition No. 3 was modified in 30 M. C. C. 487, *supra*.

In No. MC-50544 (Sub-No. 4), filed October 29, 1937, authority was sought between Marshall and Texarkana, Tex., with service at all intermediate points and the off-route points of Lodi, Kildare, Bivins, Springdale, and Sulphur, Tex. The Division granted the authority prayed (20 M. C. C. 593) but again imposed Conditions 1 and 3, the latter, however, being subsequently modified in 30 M. C. C. 487, *supra*.

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[4] The first condition imposed by the Division, which required that the service to be performed by applicant should be limited to that which is auxiliary to, or supplemental of, rail service of the railway or its rail subsidiaries, will usually be referred to hereinafter as Condition No. 1.

487 In No. MC-50544 (Sub-No. 7), filed December 27, 1938, the authority was prayed between Weatherford and Mineral Wells, Tex., and between Weatherford and a point on U. S. Highway 80 approximately 2½ miles south of Strawn, Tex., with service at the intermediate point of Thurber, Tex. This authority was granted (31 M. C. C. 1), without the imposition of either Condition No. 1 or Condition No. 3. Apparently this case was included in this group in error, for it cannot possibly affect the operations of the transport company in the respects considered by the Division.

In No. MC-50544 (Sub-No. 9), filed September 14, 1939, the authority sought was to and from Forney, Tex., as an intermediate point on U. S. Highway 80 and over an extended route between the junction of U. S. Highway 80 and an unnumbered highway at a point about 12 miles west of Forney and the junction of Texas Highway 183 and U. S. Highway 80 at a point about six miles west of Forney over an unnumbered highway and Texas Highway 183, serving Mesquite, Tex., as an intermediate point. The authority sought was granted by a report of the Joint Board which became automatically effective May 18, 1940 (23 M. C. C. 824), subject to Conditions 1 and 3.

In No. MC-50544 (Sub-No. 10), filed February 15, 1940, the authority sought was between Big Spring, Tex., and Hobbs, N. Mex., with no service at any intermediate point. The application was granted (30 M. C. C. 465), subject to Condition No. 1.

In No. MC-50544 (Sub-No. 11), the first proceeding embraced in this petition which was not included in the report of Division 5 rendered January 21, 1943, of which more later, applicant sought authority to oper-

488 ate between Pecos and El Paso, Tex., serving all intermediate points. The Division granted the authority sought (33 M. C. C. 38) but made it subject to Condition No. 1 and to a further condition that "No shipments shall be transported by applicant between any of the following points, or through, or to, or from more than one of said points: El Paso and Pecos, Tex." At applicant's instance the proceeding was subsequently reopened for further hearing, which was had, briefs were filed on April 30, 1943, and the case is now awaiting a recommended report on further hearing.

In No. MC-50544 (Sub-No. 14), filed June 16, 1941, applicant sought authority to operate between Fort Worth

Tex., on the one hand, and the sites of a new bomber assembly plant and anchorage and dock space located approximately 6 and 9 miles, respectively, northwest of Fort Worth, on the other, with service at points between Fort Worth and the bomber assembly plant. No authority was granted in respect to intermediate points but the remainder of the application was granted (30 M. C. C. 852), subject to Condition No. 1.

In No. MC-50544 (Sub-No. 19), filed December 11, 1941, applicant sought to serve the towns of Aledo, Brazos, Santo, Gordon, and Mingus, Tex., as off-route points from U. S. Highway 80. The application was granted on June 22, 1942, subject to Conditions Nos. 1 and 3.

In No. MC-50544 (Sub-No. 21-TA), filed March 10, 1942, temporary authority was sought to operate from Ville Platte, La., over Louisiana Highway 540, and thence over unnumbered parish highways to the Tate Cove Oil Field, La., and return over the same routes. The application was granted on March 20, 1942, subject to Conditions Nos. 1 and 3.

489 In No. MC-50544 (Sub-No. 24-TA), filed June 11, 1942, temporary authority was sought to operate between Fort Worth and the Tarrant Air Base. The application was granted July 9, 1942, subject, however, to the import of Conditions Nos. 1 and 3.

In No. MC-50544 (Sub-No. 30-TA), filed April 15, 1943, temporary authority was requested to serve Point Blue and Chataignier, La., over Louisiana Highway 119. The application was granted May 7, 1943, subject to Conditions Nos. 1 and 3.

As we have already stated, No. MC-50544 (Sub-Nos. 19, 21-TA, 24-TA, and 30-TA) were not included in the report of the Division, but we have included them in the instant petition for the reason that operations by virtue of the authority therein granted will be equally affected with the others by whatever may be the outcome of the Commission's consideration here.

Thus it will be seen that as of this writing, notwithstanding the essential similarity of all of these proceedings, we have the following conditions attached to the grants of authority:

Application No.	Conditions
MC-50544	No. 1
MC-50544 (Sub-No. 1)	Nos. 1 and 3 (modified in respect of transit)
MC-50544 (Sub-No. 2)	No. 1

Application No.	Conditions
MC-50544 (Sub-No. 3)	Nos. 1 and 3 (modified in respect of transit)
MC-50544 (Sub-No. 4)	Nos. 1 and 3 (modified in respect of transit)
MC-50544 (Sub-No. 7)	Neither Condition No. 1 nor 3
MC-50544 (Sub-No. 9)	Nos. 1 and 3
MC-50544 (Sub-No. 10)	No. 1
MC-50544 (Sub-No. 11)	No. 1 and key-point provision in respect to El Paso and Pecos, Tex.
MC-50544 (Sub-No. 14)	No. 1
MC-50544 (Sub-No. 19)	Nos. 1 and 3
MC-50544 (Sub-No. 21-TA)	Nos. 1 and 3
MC-50544 (Sub-No. 24-TA)	The import of Nos. 1 and 3
MC-50544 (Sub-No. 30-TA)	Nos. 1 and 3

When these are totalled, we find [excluding MC-50544 (Sub-No. 7), which was obviously included in error] that Condition No. 1, alone, has been imposed four times, that Conditions Nos. 1 and 3 (three times modified in respect of transit) have been jointly imposed seven times and their import once, and that Condition No. 1 and the described key-point provision have been jointly imposed once. We believe the Commission will agree that the decisions of Division 5 have been inconsistent and, at best, hardly conducive to an efficient, integrated operation by applicant and its parent company.

In the meantime, on December 16, 1938, the Commission instituted an investigation, docketed as Ex Parte No. 129, into the lawfulness of the substitution of motor-vehicle service for rail service and of rail service for motor-vehicle service, and on July 25, 1939, it rendered its decision therein. *Substituted Freight Service*, 232 I. C. C. 683. In the interest of clarity, we quote the portion of that decision which is pertinent to our discussion to follow herein:

> Certain of the southern and western rail carriers suggest that the substituted service might be covered by a tariff rule and directory containing a
> 491 list of participating rail, motor, and water carriers, showing between what points the substituted service is performed, similar to that already published in connection with passenger service. It appears that this substituted service, confined as it is to on-line points served by the originating or destination carrier, is of such a nature as readily to lend itself to such method

of tariff publication. Any possible breach of contract could be avoided by inserting the words "unless otherwise directed by the shipper" or a phrase of similar import in an appropriate place in the tariff rule. It appears that such publication in the form of a tariff rule and directory could be devised so as to preserve the benefits of the substituted service without subjecting the carriers to undue expense or contravening the specific provisions of the act, and thus to protect the rights of competing carriers and the general public. We suggest that the rule in the directory or individual tariffs might read somewhat as follows:

APPLICABLE ONLY IN CONNECTION WITH RATES UNDER WHICH, AS TO LESS-THAN-CARLOAD TRAFFIC, ANY OF THE RAIL CARRIERS LISTED BELOW ACT AS ORIGINATING OR DELIVERING CARRIER

The less-than-carload rates shall apply for all-rail service and for joint rail-motor service to the following extent: The motor service will be performed only between points on the line of the origin or destination rail carrier and is limited to service by the motor carriers listed immediately under the name of such rail carrier between points so listed and to the most practicable highway routing nearest to the line of that railroad.

Unless otherwise directed by the shipper, the less-than-carload shipments under the rates subject hereto will be transported in such all-rail
492 or joint motor-rail service at the option of the origin or destination carrier.

[Here list the rail carriers, motor carriers and points, in the following form:]

A. & B. Railroad Company:
C. & D. Motor Carrier between points E and F
G. & H. Motor Carrier between points J and K,
etc.

If publication is made in the applicable rate tariff, the latter should show appropriate concurrences of the motor carriers performing the substituted service. If publication takes place in the form of a directory, the latter should be published with appropriate concurrences of the rail and motor carriers listed therein, and the rate tariffs should contain concurrences of the motor carriers and appropriate reference by I. C. C. number to the directory.

On February 6, 1940, pursuant to *Substituted Freight Service, supra,* the Commission issued Special Permission R-M No. 2418, in response to a petition from Agent J. D. Hughett, which authorized him to publish and file with the Commission his Substituted Freight Service Directory No. 1, his ICC No. 1, MF-ICC No. 59, to become effective March 6, 1940, on ten days' notice, the tariff to show "the points between which rail service will be substituted for motor-carrier service with names of rail carriers performing the service, a list of participating motor carriers, and under a separate heading a list of the rail carriers performing the substituted service." The tariff was duly published and filed, with the transport company and the railway and its rail subsidiaries shown as participating therein to the extent necessary to substitute rail
493 service by the Texas and Pacific Railway Company or subsidiary rail companies for the transport company's motor-carrier service along its various routes. In addition, the transport company was shown as a party to those tariffs making reference to Agent Hughett's Substituted Freight Service Directory. As stated by the Commission in *Substituted Freight Service, supra,* but seemingly overlooked by Division 5 in its decision of January 21, 1943, the whole intent of the directory was "to preserve the benefits of the substituted service without subjecting the carriers to *undue expense* or contravening the specific provisions of the act, and thus to protect the rights of competing carriers and the general public." (Emphasis supplied for reasons to be developed in a subsequent chapter.)

And so the situation remained until April 19, 1940, when the Commission issued its Amendment No. 1 to Special Permission R-M No. 2418. That amendment provided as follows:

> ORDERED: That the authority granted by Special Permission R-M No. 2418 dated February 6, 1940 shall not extend to any common carrier by motor whose certificate of public convenience and necessity limits the operations of the motor carrier to service between stations on the line of a common carrier by rail, which is auxiliary or supplementary to the service of such rail carrier and which certificate also limits the transportation to be performed by the motor carrier to that which is part of through transportation in connection with a prior or subsequent movement by such rail carrier.

On May 29, 1940, by Amendment No. 2, which canceled Amendment No. 1 to Special Permission R-M No. 2418, the Commission authorized the extension until July
494 19, 1940, of the authortiy granted by Special Permission R-M No. 2418, "for account of common carriers by motor whose certificate to operate is limited in the respects herein above recited and whose substitution arrangements are now published in tariffs lawfully on file with the Interstate Commerce Commission:" by subsequent amendments the authority in question was extended at intervals; and finally, in August, 1941, by Amendment No. 12, it was continued "until final determination of petition to be filed by said carrier [the transport company] seeking interpretation of the operating rights."

Such a petition, entitled "Petition of the Texas and Pacific Motor Transport Company for Orders Defining Its Rights under Certain Certificates, or for Alternative Relief," was filed under date of August 7, 1941. In response to that petition, the Commission assigned for hearing the proceedings listed on the cover page hereof, with the exception of Nos. MC-50544 (Sub-No. 11), MC-50544 (Sub-No. 19), MC-50544 (Sub-No. 21-TA), MC-50544 (Sub-No. 24-TA), and MC-50544 (Sub-No. 30-TA); hearing was had on February 11, 1942; and on January 21, 1943, Division 5 (Commissioner Patterson not participating) rendered the report which calls forth the instant petition.

For convenient reference we quote below the ultimate findings and comments of the Division:

> We find that to the extent petitioner holds certificates limiting the motor vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is without authority to perform service under all-motor local and all-motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service.
>
> 495 No affirmative order will be entered at this time but petitioner will be expected, within a reasonable time after the service of this report, to bring its service and tariffs in line with the foregoing finding.
>
> *If petition desires authority to perform an unrestricted motor vehicle service over the routes and between the points for which it now holds limited cer-*

tificates to the extent indicated above, the proper procedure is to file a petition for further hearing on its applications to the extent indicated for the purpose of establishing that such service, by petitioner, is or will be required by public convenience and necessity.[5]

Plan of Petition

So numerous are the ramifications of the proceedings embraced in this petition, and so important is the outcome in the public interest, that we deem it expedient to preface the remainder of the petition with an explanation of the plan which we shall follow in presenting our contentions and the basic facts. As briefly as may be, we propose to set up the petition in the following sequence:

1. General description of the coordinated operations of the transport company and the parent railway;
2. Condition No. 3 is an obstacle to efficient operation in the public interest, serves no worthy purpose, and should be eliminated;
3. The lack of disinclination on the part of the railway to participate in joint rates with the independent
496 motor carriers if it may be permitted to do so without having to expend unconscionably large amounts in tariff publication;
4. The Division erred in finding that, "to the extent petitioner holds certificates limiting the motor vehicle service authorized to that which is auxiliary to or supplemental of rail service; it is without authority to perform service under all-motor local and all-motor joint rates with the connecting common carriers or to substitute rail service for motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service," but, in any event, with the elimination of Condition No. 3 and participation by the railway in the joint rates of the independent motor carriers and in the Hughett substitution directory (with added provision for optional substitution of truck for rail service), there could be no further barrier to operations under the terms of Special Permission R-M No. 2418;

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[5] Italics supplied by petitioners to point request hereinafter for further hearing in the event the Commission rejects our plea for reconsideration and oral argument.

5. A description of the important role of the transport company and the railway in the war effort;
6. The circumstances which justify a further hearing if reconsideration should be denied;
7. A prayer for:
   (a) elimination of Condition No. 3;
   (b) modification of Rules 30, 107 (a), and 107 (c) of Supplement No. 5 to Tariff Circular No. 20 to the extent necessary to permit the railway to become a party[6] to the substitution directory of Agent Hughett (with appropriate provision for optional substitution of truck for rail service)
497 and to the tariffs containing the all-motor joint rates which carry references thereto, and for special permission to accomplish that result;
   (c) reversal of the finding of Division 5 that "to the extent petitioner holds certificates limiting the motor vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is without authority to perform service under all-motor local and all-motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service."
   (d) further hearing in all these cases if the Commission should by some unhappy chance disagree with our view that what we ask may be appropriately granted by the Commission on the present records; and
   (e) cancellation of any and all amendments which alter the terms of Special Permission R-M No. 2418 or, in the event further hearing should be granted, indefinite extension of Amendment No. 12 thereto, which authorizes extension of the authority granted by the said special permission until final determination of petition to be filed by the transport company seeking interpretation of its operating rights, until ultimate disposition of the proceeding on further hearing—

all to the end that the transport company and the rail-

[6] The railway is already a party to the Hughett substitution directory to the extent necessary to permit of its services being substituted for those of the transport company, but, as we construe the tariffs, this does not permit it to do what we here suggest.

way—with the benediction of all concerned—may continue to furnish precisely the same service as they furnish without opposition today.

498 THE INTEGRATED OPERATIONS OF THE TRANSPORT COMPANY AND THE PARENT RAILWAY INURE TO THE BENEFIT OF ALL CONCERNED.

The Division, quite possibly through inadvertence or because of its centering its thought on technicalities of tariff publication, has so minimized the importance of the integrated operations of the transport company and the parent railway that it becomes important to describe those operations in some detail before we pass on to other phases of this petition.

The transport company began its highway operations in 1935 (R. 58),[7] in the territory served by the Texas-New Mexico Railway Company, a subsidiary of the railway, between Monahans and Lovington. This service was begun because of the impossibility of maintaining a merchandise freight service by rail which would satisfy the receivers of pipe and other oil well supplies and the shippers of petroleum products. The service in question formed the subject matter of the application and hearing in No. MC-50544. So satisfactory was this coordinated operation found to be that it was gradually extended (R. 58) along the line of the railway, the necessary additional operating rights being obtained from time to time by purchase or by the filing of the applications embraced herein, and in 1939, in order that the rights granted to the transport company might be fully exercised in the best interests of the public, all-motor joint rates with connecting motor carriers were established within the Southwest and between the Southwest, on the

499 one hand, and western trunk-line, Illinois Freight Association, central, southern, and transcontinental territories, on the other hand (R. 40-2), until today the coordinated service is available intrastate, intra-territorially, and inter-territorially along practically the entire length of the railway.

It is significant, for its bearing on the practical problems with which the transport company is faced, that in its intrastate operations it is not subject to any restrictions such as those contained in Conditions Nos. 1 and 3. It and its parent company are entirely free, as we sincerely hope this Commission will eventually leave them here in respect

[7] Unless otherwise indicated, the transcript page numbers hereinafter shown will be understood to have reference to the aforementioned further hearing of February 11, 1942.

of interstate traffic, to render the intrastate service in a fashion best suited to the needs of the public. The combination of rail and highway service has proved to be of immeasurable benefit in providing an expeditious service to shippers and receivers in the territory which the railway has served for something over sixty years (R. 59).

It must be borne in mind, too, that the benefits are not confined to the transport company and to its patrons among shippers. The primary benefits are theirs, of course, since the substitution of rail for highway movement means a better and faster service for both local shipments of the transport company and for those which it interchanges with other trucking companies, but the benefits are diffused also to the truck lines operating across the route of the railway, in that they are able to obtain shipments in joint service with the transport company for movement to and from their off-line stations which they could not hope to obtain from other motor carriers, who serve both origin and destination and are quite naturally unwilling to short-haul themselves. These trucking companies which interchange with the transport company experience a feeling of
500 security which they could not feel if they were compelled to interchange with other trucking companies serving both origin and destination. How important is this interchange to the so-called independent motor carriers is best portrayed by the fact that it is effected at such widely scattered points as Abilene, Big Spring, Cisco, Dallas, Fort Worth, Gladewater, Longview, Mineola, Mineral Wells, Monahans, Odessa, Pecos, Sweetwater, and Texarkana, Tex., Alexandria, New Orleans, and Shreveport, La., and Hobbs, N. Mex. (R. 18-19), and that in 1941 the transport company received 9,874,194 pounds of traffic from connecting motor carriers and delivered 7,237,694 pounds to them, a total of 17,111,888 pounds (R. 21). We might add that in 1942 this total grew to some 25,000,000 pounds and that in March, 1943, the traffic in question again increased tremendously. To underline this growth, we give below a comparison of the figures for March, 1942, with those for March, 1943.

	Received Pounds	*Delivered Pounds*	*Total Pounds*
March, 1943	1,227,943	1,636,972	2,864,915
March, 1942	1,020,326	975,933	1,996,259
Increase	207,614	661,039	868,656
Percentage of Increase	20.35%	67.73%	43.51%

Is it to be wondered at, then, that counsel for independent motor carriers expressed himself as follows:

> I would like to further state that we are secondly interested in a continuation of the rights of Texas & Pacific Motor Transport Company to interchange with independent common carriers. We would like to see
501 that continued in the future, and would like to see some method worked out by the Commission whereby that privilege may continue, except that we do not want to see the restrictions removed from the certificates in order for them to be permitted to do so.
>
> That is the interest that we have in the case; (R. 8)

that the subsequently added the following statement:

> May I ask that the record show that I join in the first part of the motion of Mr. Lancaster, wherein he asked that petitioner be permitted to continue operating in the future as it operated in the past and be permitted to be a member of the same tariff as the independent common carriers?
>
> And I further join in that part of his motion wherein Counsel for petitioner requested that the Commission add a provision to the certificates of the Texas & Pacific Motor Transport Company granting to the Petitioner authority to continue interchanging freight with other common carrier motor carriers and being a member of the same tariff, and making that change in their certificates by amendment; but do not join in the latter part of Mr. Lancaster's motion wherein he asked for an additional hearing or further hearing; (R. 69-70)

and that Agent Hughett, speaking for substantially all the independent motor common carriers operating throughout this territory, approximately 190 in number, testified that these carriers had expressed to him their desire to interchange freight with the transport company, to maintain joint rates with the transport company, and to be a party to the same tariffs as the transport company (R. 33), and that the present method of tariff publication is highly desirable from their standpoint (R. 29)?

502 So numerous are the elements which go to prove the practical desirability of a continuance of the present coordinated service that for lack of time and space we hardly feel justified here in setting them forth in full detail, but we do ask permission to mention the following few: Under the rules of the Texas Railroad Commission, motor carriers were prohibited, until about one year ago,

from running more than three trucks over specified highways between 8:00 A. M. and 10:30 P. M. on Sundays and designated holidays; at these times the transport company willingly received traffic in interchange for handling by rail (R. 20), an obviously efficient method of overcoming this barrier to prompt service. It is true that this restriction was lifted by the Texas Railroad Commission about a year ago, but it must be remembered that this removal of the restriction was a temporary measure brought about by the war emergency and that we may anticipate renewal of the restriction once that emergency has come to an end. As a general proposition, the service of the railway is used in lieu of highway service in handling shipments from the larger points, in and around which the highways are more congested, to outlying points (R. 20-1). And lastly, although manifestly most important, is the fact that through its arrangements with the railway the transport company has available to it at destination the station facilities, the local pickup and delivery service, the service of a local agent, and private telegraph and telephone installations, in connection with the receipt and delivery of freight, where independent truck lines ordinarily do not have such facilities. These advantages of the transport company's service are more than ever important in the case of C. O. D. shipments. Save to state that of the 353 stations
503 along the line of the railway from and to which rates are maintained by the transport company, 192 have full-time agents, freight houses, and pickup and delivery service, it will not be our purpose to describe the facilities of this sort along the entire length of the railway, but we call attention, for purposes of graphic illustration, to the situation obtaining in the area between Shreveport and New Orleans, dealt with in No. MC-50544 (Sub-No. 1). Exhibit No. 11, introduced in that proceeding, contains the following illuminating figures:

	Transport Company		Other Motor Common Carriers	
	Number Towns Named	Percent of Total Towns Named	Number Towns Named	Percent of Total Towns Named
Depot Facilities and Agent	73	100.0%	16	21.9%
Local Pickup and Delivery	69	94.5%	16	21.9%
Telephones	27	36.9%	10	13.7%

The value which the shippers place upon the presence of a local agent with private telegraph and telephone, pickup and delivery service, and storage space at his command,

is evidenced by the testimony of shipper after shipper in all these cases. Not only does the transport company hold out to the shipper the undivided responsibility which he desires, a saving of time in transit, a dependable scheduled service not otherwise available to him and an absence of interchange, but the shipper has at his service an agent who can quote rates and schedules, handle claims of one sort or another, and facilitate delivery of C. O. D. shipments, who is regularly on call by telephone, who can trace shipments by telegraph and telephone, who can supply a pickup and delivery service, and who has storage space for shipments. The saving of time in transit is ex-
504 plained in part by the fact that trucks may not now travel in excess of 35 miles per hour, whereas there is no regulation of train speeds and the trains used by applicant in this substituted service frequently maintain a speed of 60 miles per hour, and by the fact that not infrequently large quantities of freight accumulated by connecting motor carriers at junction points on a given day cannot be reforwarded in highway service on the same day, but, instead, must be held over until the next day. When these hold-overs occur the freight is delayed in transit for at least 24 hours.

By means of the aforesaid factors, the merchants in the smaller towns can compete on even terms with the merchants in the larger towns and can reduce their overhead. As stated by one witness, whose testimony was confirmed by that of many others, "Anybody who has not done business in a small town will never appreciate what the merchant is up against when he does not have an agent to take up his claims with or to quote rates" (R. 29—Sub-No. 1). At some of the "inland" towns there is no other truck or rail service available; presence of an agent and of storage space becomes doubly important.

It is this type of service that the independent motor carriers may utilize through interchange with the transport company, which, with the railway, profits from availability of a service which can expand or contract with the demands of fluctuating traffic; from a smaller number of train stops by fast trains; from heavier loading of cars which must move regardless of whether interchange traffic with independent motor carriers be or be not available; from the saving in terminal costs; from the reduced movement of empty cars; from reduced car mileage; and from the prestige of furnishing to its patrons a rapid and depend-
505 able service which they would seek elsewhere in vain.

And it is for an undisturbed continuance of this superb type of service that your petitioner, with the wholehearted support of the independent motor carrier, here prays. It would be singularly unfortunate if the transport company were forced, for mere procedural reasons, to abandon a service which benefits the shippers, the transport company, the railway, and the independent motor carriers. Particularly is this so when we remember [provided the Commission does not concur in our view that the Division erred in its construction to be accorded Condition No. 1] that the railway, as we shall discuss in a subsequent chapter hereof, will participate in joint rates with independent motor common carriers if not required by the Commission to spend unconscionable amounts on tariff publications.

CONDITION NO. 3 SHOULD BE ELIMINATED.

At sheet 6 of its report of January 21, 1943, Division 5 had the following to say in respect to Condition No. 3:

> There is another reason why petitioner may not properly be a party to Agent Hughett's substitution directory. Special Permission R-M No. 2418 does not permit the substitution of rail service for motor vehicle service where the motor carrier may not perform the movement entirely by motor vehicle. The substituted rail service must be in lieu of the motor carriers' "actually available services via highways for which such motor carriers have lawful operating rights as common carriers via motor vehicle". To the extent petitioner's certificates contain Condition 3 the shipments which it is authorized to handle must move partly by railroad and partly by motor vehicle.
>
> It has no authority to perform the movement entirely
> 506 by motor vehicle and hence the substituted rail service is not in lieu of petitioner's actually available services over highways for which it holds operating authority.

As we have already pointed out, Condition No. 3 has been imposed in seven of the cases here considered and its import in one of them, and we challenge anyone to find in those eight cases any element of substance to distinguish them from those in which Condition No. 3 was waived. Thus, in *Texas & Pacific M. Transport Co. Ext.—Wills Point, Tex., supra*, the Division first inserted Condition No. 3 in its findings but on reconsideration, 31 M. C. C. 500, it quite properly eliminated this condition in its entirety. The very circumstances which obtained in that case obtain in all these cases.

Bear in mind that applicant does not seek by this petition to change its methods of operation— *which are wholly satisfactory to all the independent motor carriers*—in order to furnish an additional service. To the contrary, the whole concept of the operations of the transport company is that wherever added efficiency can be achieved, merchandise cars will be employed in lieu of trucks, whether the traffic to be hauled be in intrastate commerce, in interstate commerce locally along applicant's routes, or in interstate commerce to or from points beyond applicant's lines by means of interchange with other motor carriers. Every phase of applicant's operations is subordinated to efficiency. Efficiency, with its consequent saving of man power, tires, and gasoline, means use of merchandise cars in lieu of trucks wherever such cars are operated and connections can be made. Self-interest, too, dictates such a course to applicant. In every such instance the
507 traffic is placed in the through merchandise car for movement to a break-bulk point; if the destination lies beyond the break-bulk point the traffic is invariably placed in a truck for delivery. It frequently happens, however, that traffic arriving by a connecting motor carrier for interchange with the transport company or traffic proffered by the shipper reaches the transport company's docks too late to be placed in the merchandise car for next-morning delivery, with the consequence that, in order that expedited service may be rendered to the shipper and consignee, the traffic is placed in a truck which leaves later in the evening and is given next-morning delivery just as if it had been placed in the merchandise car. The coordinated service is superior to any other available to the shipper, and no competitor loses an ounce of traffic.

Again we ask that the Commission bear in mind that *the transport company does not seek to change this method of operation.* Even in the absence of Condition No. 3 it will invariably employ a through merchandise car between break-bulk points and a truck beyond except in those instances in which the earlier departure of the merchandise car makes prompt service in that fashion impossible, in which event the truck enters the picture and there is no prior or subsequent movement by rail. Yet this dispensing with a movement by rail is a mere incident of the operation: the transport company much prefers to use the merchandise car whenever it can consistently do so. Use of the truck, although a mere incident of service, is exceedingly important to the shipper whose wares have missed the out-

bound merchandise car. But where Condition No. 3 remains in effect the traffic, frequently for 24 hours, must await the departure of the next merchandise car.

In none of these several records do we find any testimony designed to prove that the transport company should be forced to render an inferior service merely in order that a prior or subsequent rail haul might be coupled to the truck movement. The shippers are well satisfied, and *the independent motor carriers have no fault whatsoever to find with applicant's present methods of operation.*

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The retention of Condition No. 1, that the service to be rendered by the transport company shall be limited to that which is auxiliary to or supplemental of rail service of the railway, together with the machinery for imposition of additional conditions provided by Condition No. 5, will be quite sufficient for all purposes here, for it is quite obvious that it would prevent the transport company from rendering a service wholly separate and distinct from that of the railway. For instance, the transport company would violate Condition No. 1 if it attempted to render an all-truck service without regard to the contemporaneous service by merchandise car. The meaning of the phrase, "auxiliary to, or supplemental of," is now well settled in transportation parlance. *Kansas City S. Transport Co., Inc., Com. Car. Application,* 28 M. C. C. 5. And if further support were needed it is readily available. The word "auxiliary" is defined in Webster's Twentieth-Century Dictionary as "helping; aiding; assisting; subsidiary; conferring aid or support by joint exertion, influence, or use." The word "supplementary" is defined therein as "supplemental; serving as an addition; extra." The word "supplemental," to carry still farther, is defined therein as "of the nature of a supplement; serving to supplement, fill up, or complete by additions; added to supply what is deficient." It is plain that the service which the transport company furnishes today, and which it will continue to furnish if Condition No. 3 be eliminated, falls squarely within the above definitions, for certainly it is meant to be, and is, of assistance to the railway, furnishes support to the railway, and completes by additions a rail service which in some respects is in need of improvement. Unless, indeed, "auxiliary" and "supplementary" are taken to mean "a prior or subsequent rail haul," it is difficult to conceive how the applicant's service could more directly furnish aid and support to the parent railway.

509

The only purpose served by Condition No. 3, to state it bluntly, is to deprive the transport company and the railway of the mobility of action which characterizes their present integrated service.

The blighting effect of Condition No. 3 becomes more quickly apparent if we contrast the intrastate and interstate phases of the coordinated operation; and we should perhaps add at this juncture that intrastate traffic constitutes 75 percent of the merchandise freight handled in the coordinated service. Shreveport may be used for purposes of illustration. All traffic coming to the transport company at Shreveport is deposited at one freight station, whether it be interstate or intrastate freight and whether it be local to Shreveport or received in interchange from connecting motor carriers. Where such traffic is destined to Alexandria, for example, it is placed indiscriminately in a consolidated Alexandria-Addis-New Orleans merchandise car and next-morning delivery is effected at Alexandria, a break-bulk point. Thus Condition No. 3 is strictly observed. But if traffic from the several sources is received at the Shreveport freight station too late for movement to Alexandria on the through merchandise car, all the *intrastate* traffic is placed on a truck for late departure and next-morning delivery in Alexandria just as efficiently as if, from the shipper's standpoint, it had in fact
510 moved in the merchandise car, whereas the *interstate* traffic, because of Condition No. 3, must await the departure of the next day's merchandise car, with the consequent delay to the traffic and preference of the intrastate goods, and, moreover, the transport company is forced to bear the burden of segregating the intrastate traffic from the interstate traffic in the freight house. A just regard for efficiency of operation quite clearly bespeaks the elimination of Condition No. 3.

The situation is even more aggravated in the case of the smaller points which lie between the break-bulk stations. Natchitoches, La., furnishes an example. The *intrastate* traffic is placed in a truck which serves points as far south as Natchitoches, including that point, and then loops back over the westerly route to Shreveport, whereas the interstate traffic, because of Condition No. 3, must be segregated in the freight house and later delivered by way-freight train with all the attendant delay, expense, and inefficiency. Thus, solely by reason of Condition No. 3, the much smaller interstate traffic becomes the one obstacle to the efficient and economical handling of the combined interstate and

intrastate freight—and all to no good purpose. Wholly regardless of Condition No. 3, it is the single purpose of the transport company and the railway to use through merchandise trains in every instance in which they can be efficiently used; they here ask that they be permitted to continue to do so but that additionally they be permitted to substitute truck service in those instances in which the interest of the public speaks for such substitution. It seems a rather harsh judgment that the *public* should suffer because of mere unjustified fear on the part of the Commission that the transport company has in mind inaugurating a service which bears no relation to the rail service.

511 We respectfully pray, then, that on reconsideration the Commission will eliminate Condition No. 3 from each of the cases in which it has been imposed. Serving no good purpose, it is here a mere excrescence on an otherwise healthy transportation body.

THE RAILWAY IS NOT AVERSE TO PARTICIPATING IN JOINT RATES WITH THE INDEPENDENT MOTOR CARRIERS.

As we have already stated, in order that it may continue to serve the public justly as at present in coordination with the transport company, the railway is not averse to participating in joint rates with the independent motor carriers *if it may do so without being required to expend disproportionately large sums for tariff publication.*

The present obstruction to such participation by the railway is found in Rule 107(c) of Section Two to Supplement No. 5 to Tariff Circular No. 20. The rule follows:

> No rule or provision of an all-motor tariff filed with the Bureau of Motor Carriers under an MF number may be made applicable to or made to govern any joint rail-motor rates.

Neither may the all-motor rates be published in tariffs to which the railway is now a party; such publication would violate Rule 30 of Section One of Supplement No. 5 to Tariff Circular No. 20, reading as follows, so far as here pertinent:

> Rates, rules, or charges applying to transportation wholly by motor carrier * * * may not be published in any schedule filed pursuant to section 6 of Part I of the Interstate Commerce Act and issued under these rules.

512 Furthermore, if the railway or the transport company were to publish tariffs containing joint rail-

motor rates the same as the present all-motor rates, those tariffs could not be utilized by the all-motor carriers because such utilization would violate Rule 107(a) of Section Two of Supplement No. 5 to Tariff Circular No. 20, reading as follows:

> Rates applying exclusively by motor carrier may not be published in any schedule containing joint rail motor rates filed pursuant to section 217 of Part II of the Interstate Commerce Act and under the provisions of this circular.

In order to participate in the all-motor rates, therefore, the railway, if required to adhere to the above-quoted rules, would have to duplicate each and every one of the motor-carrier rates, rules, and regulations. The tremendous burden which such duplication would cast upon the railway is best shown by the following colloquy (R. 49-52) between witness McDonald, Assistant General Freight Agent of the transport company and Assistant General Merchandise Traffic Agent of the railway, the Examiner, and counsel for the transport company, which, because of its importance, we quote in full at the risk of unduly lengthening this petition:

> To compile and keep up such tariffs, if physically possible, in any accurate manner, would, to say the least, be prohibitive in cost. For instance, Exhibit No. 3 shows 6,943 pages of tariff matter governing transportation via the Transport Company. Several thousands of pages of supplemental matter have already been cancelled. For instance, 140 supplements have so far been issued to Mid-Western Motor Freight Tariff Bureau, Inc., Agent, Freight Tariff No. 29, MF-ICC No. 73, of which only eight are effective.
> 513 This means that supplemental matter in the other 132 supplements have been cancelled since issuance of the tariff.
>
> As a further example, 700 corrections have already been made to Rocky Mountain Motor Tariff Bureau, Inc., Agent, Commodity Tariff No. 6, MF-ICC No. 11, since it became effective November 1, 1940. 315 revised pages of corrections to Rocky Mountain Motor Tariff Bureau, Inc., Agent, Trans-Continental Motor Freight Territory Directory No. 1, MF-ICC No. 12, have just recently been issued, scheduled to become effective February 24, 1942. I now offer in evidence these 315 revised pages of correction matter.

Q. (By Exam. Borroughs) Mr. McDonald [are they] already on file with or [are they] to be filed with the Commission?

A. Under the rules, they are required to be filed with the Commission by the publishing agent.

Exam. Borroughs: Counsel, the Commission will take judicial notice of that tariff publication or file with it. I don't believe it is necessary at this time to offer such a voluminous exhibit for this record.

Mr. Lancaster: We desire to file the exhibit only to illustrate the impossible volume of work which would be put upon the Transport Company and the Railway Company if they were required each to undertake to file and publish their separate tariffs, and we have no desire to burden the record. However, we would like to say for the record that this one supplement of one motor carrier tariff bureau contains 315 pages, and they are issued with some frequency.

Exam. Borroughs: All right, proceed.

The Witness: In Agent J. D. Hughett's Tariff No. 1-B MF-ICC No. 81, which names all-motor rates between points in Southwestern Territory, there are approximately 262 participating carriers. The Rocky Mountain tariffs naming all-motor rates from and
514 to Trans-Continential Territory apply from and to approximately 10,000 points. It is therefore clear that to duplicate the present all-motor tariffs a large force of tariff compilers would be required and also other clerical help. Additionally it is also clear that in order to print sufficient copies of the tariff to meet the needs of the participating carriers and the shipping public a tremendous printing expense alone would be incurred. It could not be reasonably anticipated that the concurring motor carriers would be agreeable to bearing any share of the cost incident to compiling, maintaining and supplying these tariffs simply for the privilege of participating in rates with the Transport Company.

It follows that it is inescapable to reach any conclusion but that heretofore expressed that it would be prohibitive for the Transport Company or the Railway Company to publish tariffs that would afford the Transport Company the representation it now enjoys, and even if this were done it would not produce any rates or service different from that which now obtains by virtue of the presently prevailing simple and inexpensive publication.

That publication to which I refer means the substituted freight service directory.

As a rough but conservative estimate, the initial expense to the railway of duplicating the joint motor-carrier rates in which the transport company now participates, by virtue of the Hughett substitution directory and the rate schedules making reference thereto, would be $50,000. But that sum, large as it is, would be only the introduction, as testified by witness McDonald, to a huge and never-ending outlay for current maintenance of the tariffs.

We ask that the Commission take careful note how simple would be the resulting tariff publication if the railway were authorized to join in the Hughett substitution directory and the all-motor tariffs making reference thereto. Whereas now the Hughett directory and these rate tariffs provide for participation by the transport company and for substitution by the transport company of rail service along the line of the railway, if the railway were permitted to do what we here ask we should have a similar participation by the railway in the Hughett directory and in the rate schedules making reference thereto and a similar provision for substitution of motor-carrier service for rail service along the line of the railway. Most assuredly it could not then be argued, as the Division argues as sheet 6 of its report of January 21, 1943, that "to the extent it [the transport company] is substituting rail service for motor vehicle service, the rail service is auxiliary to or supplemental of the motor vehicle service rather than the motor vehicle service being auxiliary to or supplemental of rail service."

With the elimination of Condition No. 3, a subject of which we have already treated, we should have the greatest simplicity and economy of tariff publication; we should have a continuance of the splendid integrated service which is now available to the shipping public, we should have the acquiescence of the motor carriers in the results thus accomplished, and we should have the joint motor-rail rates which were encouraged by the Commission as long ago as 1928, when it promulgated its report in *Motor Bus and Motor Truck Operations*, 140 I. C. C. 685, 745-6, and which are now contemplated by Part II of the act. Strangely enough, although the act itself contemplates such joint rates, the Commission, through Supplement No. 5, to Tariff Circular No. 20, very effectively discourages their publication—and at the very time, may the Commission please, of the most critical shortage of man power and materials of every description.

516 For all the foregoing reasons, then, our second prayer becomes one for modification of Rules 30, 107 (a), and 107(c) to the extent necessary to permit the railway to become a party to Agent Hughett's substitution directory (with an appropriate provision for optional substitution of truck for rail service) and to the tariffs naming the all-motor joint rates which make reference to the said substitution directory, and for special permission to accomplish that result.

WHOLLY ASIDE FROM THE MATTER OF ELIMINATION OF CONDITION NO. 3 AND MODIFICATION OF THE RELEVANT RULES OF THE TARIFF CIRCULAR AND SPECIAL PERMISSION, THE DIVISION ERRED IN HOLDING APPLICANT TO BE WITHOUT AUTHORITY TO OPERATE AS AT PRESENT.

A careful analysis of the report of Division 5 discloses that it is based on fear, and fear only—fear that the transport company will launch motor-carrier operations which are not coordinated in any way with those of the railway but will be identical in principle with those of the existing independent motor carriers. See, for instance, how it expresses itself at sheet 4 of the mimeographed report:

> Thus it appears that the petitioner is engaging in operation as a common carrier by motor vehicle performing the same kind and character of service as is performed by motor common carriers generally. It holds itself out to, and transports shipments moving wholly by motor vehicle between points on its lines and between points on its lines and points on the lines of other motor carriers under bills of lading issued by the petitioner and it participates in and collects all-
517 motor rates. *This service is the same as the service rendered by a motor carrier which is not performing a service auxiliary to, or supplemental of, rail service.* (Emphasis ours.)

And it then goes on to state at sheet 5, again incorrectly, in reference to the measure of proof adduced by the transport company at its several hearings, that, "There was no need for another motor carrier to furnish service *such as that supplied by existing motor carriers* which have no close relation to the operations of the Railway," and that, "There was no public need for another motor carrier in the field nor for the Railway, through petitioner, *to engage in a new field of service*," (emphasis supplied), and at sheet 6 it comments, again without factual support, we contend, that, "To the extent petitioner

is performing or participating in all-motor movements on the bills of lading of a motor carrier and at all-motor rates, it is performing a motor service *in competition with the rail service and the service of existing motor carriers*, * * *." (Emphasis supplied.)

It is quite clear from our previous description of the coordinated operations of the transport company and the railway that the Division has wholly misconceived the fundamental nature of the service rendered by the transport company. That service, accorded by highway, alone, at those hours of the day following the departure of the merchandise cars or between those points from and to which merchandise cars cannot be efficiently maintained, is altogether different from the service rendered by the independent motor carriers, whose single objective is to operate over the highways. The primary objective of the transport company, to the contrary, is to operate by
518 use of train service wherever this can consistently be done and to supplement the train service only under those conditions which we have described. In no sense can this type of service by the transport company and the railway be deemed to jeopardize the continued success of the independent motor carriers. That this is so is best evidenced by the keen desire of the independent motor carriers to transport jointly with the transport company; if it were otherwise, logic teaches, the motor carriers would be interposing the strongest opposition to our prayer.

It stands to reason (unless Condition No. 3 is to be read into Condition No. 1, an incorporation which would violate all known rules of construction) that so long as the transport company, out of sheer selfish interest if for no other reason, used the railway train service too the utmost of its ability Condition No. 1 authorizes it to operate over the highways without a prior or subsequent rail haul, for such all-highway service is still auxiliary to or supplemental of the service of the railway. Having the right to furnish an all-highway service, common sense demands that it be left free to implement that right by every means at its disposal which is in the public interest. It cannot possibly be in the public interest that at one moment the Division should authorize the transport company to render an all-highway service but at the next moment should make it utterly impossible for it to do so. In substance and effect it smacks of a revocation of the certificates issued to the transport company without the formality of a revocation proceeding. Having granted applicant the right to oper-

ate in a described manner, the Division may deprive it of that right by no other means than a revocation proceeding, with all the protection afforded a certificate-holder by section 212 of the act.

519 It impresses us as curious, parenthetically, that in arriving at its conclusions the Division has completely ignored the shipping public. It is not the province of this Commission to grant authority to an applicant before it merely in order to further the cause of that applicant, or to protect the competitors of that applicant in the interest solely of the competitors, but, rather, to base its action on a due regard for the *public* interest, which means, obviously, the combined interests of applicant, competitors, connections, and the general public. Nowhere in the report of the Division will there be found any evidence of consideration of the general public. Differently stated, what the Division has done is to give thought to the interests of the shipping public in rendering its decisions in the various individual cases, but to forget their very existence when it comes time to take action which would permit the transport company to render a service from which the shippers and receivers could profit.

The most glaring instance of the handicaps under which the shippers would be left to struggle is furnished by the towns of Hawkins, Aledo, Brazos, Gordon, and Mingus, Tex., and Provencal, Point Blue, and Chataignier, La., *none of which has any other common-carrier motor-carrier service than that of the transport company.* Throughout the country is a vast number of points, many of them of considerable population and importance, which have no rail service but are served by motor common carriers, a statement which can be promptly verified by a mere glance through the volumes of the Commission reports dealing with railroad abandonments. Under the Division's restrictive findings it is impossible for these last-named points to ship to and

520 from the Texas and Louisiana points just named except on a combination of motor-carrier and rail rates. They cannot possibly reap the benefits of joint rates, unless, as we have already urged the Commission will authorize the participation of the railway in the motor-carrier point rates by the method which we have outlined in a previous chapter. In these instances there is patently a definite need for the service of the transport company. To avoid any misapprehension on this score, we hasten to add that there have been actual movements of this very sort; and there is every reason to believe that such move-

ments will continue. Hawkins, for example, is the center of a relatively new oil development, and there have been movements to Hawkins by way of connecting motor carriers and the transport company from points in Oklahoma which are not served by any rail line. *That service could not have been rendered at joint rates if the transport company had not been engaged in interchange of interstate traffic with connecting motor common carriers who are parties to Agent Hughett's substitution directory and to the rate tariffs making reference thereto; and such service would become impossible under the findings of the Division!* Surely the Commission will recognize that it owes a duty to the shipping public to subordinate mere technicalities of construction to the practical problems of transportation, to abandon form for substance, the adjective for the substantive.

In the paragraph beginning at the bottom of sheet 5 of its report, Division 5 makes a statement which to our minds evidences a further confusion of thought on the part of the Division. The statement to which we refer reads as follows:

> Condition 1 limits the character of service to be performed by the petitioner to that which is auxiliary to or supplemental of the rail service of the Railway. *It limits the service to be performed by truck to the transportation of the rail traffic of the railway.* (Emphasis ours)

521

We have searched diligently but in vain through the several reports on the subject for anything to indicate that the service of the transport company must be confined to transportation of the rail traffic of the railway. Neither do we find any such indication, or even intimation, in *Kansas City S. Transport Co., Inc., Com. Car. Application, supra,* decided by the Commission itself and generally accepted as the leading case on the subject of substitution service. It is noteworthy, we might add, that Commissioners Lee and Rogers, the two members of the Division who handed down the report which draws forth this petition, dissented in the case just cited. It is only to be inferred that they are out of sympathy with the majority of the Commission on the subject of the type of service which may be rendered by a rail subsidiary.

The Commission is well able to put its thoughts in a clear and unmistakable way. If the Commission had meant in *Kansas City S. Transport Co., Inc., Com. Car. Applica-*

tion, supra, to restrict the rail subsidiaries there before it to the carriage of rail traffic, it would hardly have left the subject one for interpretation. The very fact that the Commission did not there order that the rail subsidiaries haul rail traffic, and rail traffic only, is sufficient to reveal, under time-honored rules of construction, that it had no intention whatsoever that they should be confined to such carriage. These subsidiaries were free, in the absence of specific prohibition, to transport any traffic which could reasonably be deemed to be in a service auxil-
522 iary to or supplemental of the rail service of their principals. As we have said before, under given circumstances, such as those here present, the service of a railroad motor-carrier subsidiary may be auxiliary to or supplemental of the rail service of its parent company even though the traffic does not move one inch by rail.

We earnestly submit, in closing this chapter, that only under an exceedingly illiberal construction, stemming from apprehension that the transport company may purpose poaching on the preserves of the independent motor carriers, can the service which is now being rendered by the transport company in interchange service with connecting motor carriers be so closely linked to that of the railway. Under a fair and equitable construction of the certificates granted to the transport company which will allow it to transport interchange traffic with connecting motor carriers at joint rates—and we once more repeat that we find nothing which in terms or implicitly forbids such transportation—we shall have a service which is ideally adapted to the needs of the shippers, is satisfactory to the connecting carriers, harms no competitor, and enables the transport company and the railway to conduct their affairs economically and efficiently. Everyone gains. Nobody loses. In the interest of all, the Commission should reconsider and reverse the Division by finding on the present records that to the extent the transport company holds certificates limiting the motor-vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is empowered to perform service under all-motor local and all-motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, is a proper party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service.

523 THIS WOULD BE THE MOST UNFORTUNATE TIME IN ALL OUR HISTORY TO DEPRIVE THE SHIPPING PUBLIC OF THIS COORDINATED SERVICE.

It is a matter of general knowledge, of course, that the transportation facilities of this country, largely because of the war emergency, are burdened to the breaking point. Never before have they been under such a strain. By far the greater part of the traffic now being transported by all transportation agencies enters directly into our war effort. Rubber and gasoline are literally priceless; we are daily and almost hourly bombarded by press and radio with articles and discussions of the paramount importance of conserving these precious commodities. Spare parts for automotive equipment are almost unobtainable; large numbers of over-the-road units are idle for lack of them. It is impossible to conceive of a time in all our history at which it would be more unfortunate and short-sighted to deprive the public of this valuable coordinated service with which we are here dealing, and in the doing of it to enforce the squandering of rubber and gasoline. We cannot believe that for mere matters of form rather than of substance the Commission will extirpate this splendid service which can nowhere be duplicated. It is almost ironical that the body which is the guardian of the public interest should even dream of abolishing a service which no one opposes.

To all intents and purposes, Texas and Louisiana, where the major portion of the routes of the railway and the transport company lie, are today armed camps, from and to which huge quantities of materials flow. If the transport company is forced to discontinue its joint arrangements with the independent motor car-
524 riers, because of what appeal to us as no more than formalities, the flow of those materials will be impeded and delayed. In order to emphasize what we have said on this score, we give below in tabular form a list of some, but by no means all, of the points along applicant's routes which are directly concerned with the war effort.

Point	Type of Industry	Comments
Abilene, Tex.	Artillery camp at View, Tex.	Freight is interchanged by applicant at Abilene for this artillery camp at which are located some 30,000 men.
Alexandria, La.	Training schools.	At Alexandria and nearby are four training schools for infantry at which are maintained about 93,000 men.
Arlington, Tex.	Eighth Corps Area Distributing Center.	A very large volume of traffic moves to and from this center.
Benbrook, Tex.	Bomber factory and machine shops.	These industries employ approximately 20,000 persons.
Big Springs, Tex.	Flying school.	
Bonham, Tex.	Flying school.	
Dallas, Tex.	Lockheed Assembling Plant and several air corps training fields.	
Fort Worth, Tex.	Army supply depot.	
Grand Prairie, Tex.	Two airplane factories and air training schools.	The airplane factories employ about 20,000 persons.
Hobbs, N. Mex.	Flying school.	The personnel of this school, which lies about three miles north of Hobbs, consists of 7,000 men and will shortly increase to about 11,000 men.
Hobbs, N. Mex.	Interchange.	At Hobbs the transport company interchanges freight for Clovis, Fort Sumner, Carlsbad, Fort Roswell, Albuquerque, and Tucumcari, at all of which are Government projects or flying schools.
Midland, Tex.	Bombing school.	Personnel of about 8,000 men.
Mineral Wells, Tex.	Artillery training and induction center.	Personnel of about 30,000 men.
525		
New Orleans, La.	Government projects.	Here there are so many Government projects of one sort or another that it is impossible to enumerate them here.
Paris, Tex.	Interchange	The transport company interchanges here for a large camp just a few miles north of Paris.
Pecos, Tex.	Interchange	The transport company interchanges here for Mann, Tex., where there is an air school of about 10,000 men.
Pyote, Tex.	Flying school.	About 6,000 men.
Sherman, Tex.	Army camp.	This camp lies between Sherman and Denison. There are there located some 30,000 men.
Shreveport, La.	Flying school.	Between 6,000 and 10,000 men.
Sweetwater, Tex.	Avenger Field.	About 1,000 men.
Terrell, Tex.	Training school.	About 4,000 men.
Texarkana, Ark.	Red River Ordnance Depot and shell-loading plant.	In this project are some 43,000 acres.
Tye, Tex.	Flying school.	This school lies just west of Abilene.

To the foregoing may be added the fact that, by means of interchange with independent motor common carriers, the transport company serves literally hundreds of other, similar defense projects throughout the length and breadth of these States. No comment is necessary to demonstrate that in sum total these represent a vast contribution to the war effort and that nothing should be allowed to lessen the corresponding contribution of the transport company and the railway.

So constantly in the public eye today is the matter of conservation of man power, rubber, and gasoline that we have saved that subject for discussion in this chapter, but before turning to a description of the actual savings we ask that the Commission bear in mind that economy of operation is of great importance in peace times and
526 also that that importance is simply brought out into sharper relief by the emergency conditions of today. Indeed, it is the declared policy of the Congress to provide a regulation of all modes of transportation which shall be so administered as "to promote safe, adequate, economical, and efficient service." The Commission will not fail to recognize that the coordinated service rendered by the transport company and the railway are a full response to that declaration.

As we stated in an earlier chapter, the inclusion of so-called motor-carrier freight in the railway merchandise cars simply further utilizes box cars which are already regularly in operation and must so remain, so that all of the man power, rubber, and gasoline which would be required to perform the highway hauls between the points where rail service is substituted are saved. As an illustration, a motor-carrier shipment destined from Dallas, Tex., to Hobbs, N. Mex., is loaded in a box car in Dallas and forwarded in regularly scheduled train service from Dallas to Big Spring, Tex. From Big Spring the freight would be moved by truck to Hobbs, 114 miles. This method eliminates the highway haul from Dallas to Big Spring, 294 miles. Therefore, out of a total normal highway haul of 408 miles via applicant's route [the shortest possible highway route is 397 miles] from Dallas to Hobbs, applicant's present method of handling results in a highway haul of only 114 miles and definitely saves the man power, rubber, and gasoline necessary for a highway haul of 294 miles. As a matter of fact, a greater saving is accomplished for the reason that Hobbs is primarily a consuming point and the return movement

of the truck from Hobbs would ordinarily involve an empty haul or a partial load.

527 The same method is employed in handling motor-carrier shipments originating beyond Dallas and destined to Hobbs or to points beyond. For instance, a shipment originating at Little Rock, Ark., and destined to Hobbs, routed via connecting motor carrier to Dallas and thence via applicant's route, would be transported by the connecting motor carrier over the highway from Little Rock to Dallas, thence in rail service from Dallas to Big Spring, and thence over the highway from Big Spring to Hobbs. Again this method eliminates the highway haul of 294 miles from Dallas to Big Spring. If applicant did not maintain arrangements for movement by train from Dallas to Big Spring it would be necessary that the freight travel by truck the entire distance from Little Rock to Hobbs, 752 miles if interchanged with applicant or 741 miles if moved over the shortest possible highway route. Under applicant's plan of operation that haul is reduced to 458 miles, made up of 344 miles from Little Rock to Dallas and 114 miles from Big Spring to Hobbs.

The instances which we have just given are not isolated, but typical; applicant follows precisely the same basic method of transporting merchandise freight between many, many other shipping, consuming, and distributing centers. In substantiation of this assertion, we give below the points between which applicant handles freight by regularly operated box cars in scheduled train service in lieu of transporting it over the highways between the same points with the indicated sacrifice of economy:

Merchandise Cars Operated Daily		Loaded Highway Haul Eliminated (Miles—Shortest Route One Way)
From	To	
Dallas, Tex.	Abilene, Tex.	186
"	Texarkana, Ark.-Tex.	185
"	Big Spring, Tex.	294
"	Fort Worth, Tex.	32
"	Grand Prairie, Tex.	12
"	Longview, Tex.	125
"	Marshall, Tex.	147
"	Shreveport, La.	184
"	Sweetwater, Tex.	227
Fort Worth, Tex.	Abilene, Tex.	154
"	Big Spring, Tex.	262
"	Dallas, Tex.	32
"	Denison, Tex.	98
"	El Paso, Tex.	602
"	Longview, Tex.	157
"	Texarkana, Tex.	214
"	Sweetwater, Tex.	195
Big Spring, Tex.	Fort Forth, Tex.	262
El Paso, Tex.	Monahans, Tex.	245
Texarkana, Ark.-Tex.	Fort Worth, Tex.	214
"	Longview, Tex.	98
New Orleans, La.	Addis, La.	89
"	Dallas, Tex.	497
"	Alexandria, La.	187
"	Shreveport, La.	313
Alexandria, La.	Addis, La.	114
Shreveport, La.	Dallas, Tex.	184
"	Marshall, Tex.	37
"	New Orleans, La.	313
Total Highway Miles One Way		5,659

All of the cars shown in the above table are operated six days per week, and some of them seven days per week, at a daily one-way saving of 5,659 miles. Since the trucks are forced to return to their terminals, the savings is in fact twice that shown in the table, or 11,318 highway miles per day. Thus the round-trip truck hauls eliminated each day, on the basis of ten tires to the unit, means a daily saving of 113,180 tire-miles. Based on the operations for one
529 month, even if we assume the very minimum of 25 days per month, the saving in tire-miles is 2,829,500, truly food for thought even in normal times of peace. In this critical period of shortage this waste which would be entailed but for applicant's coordinated operation is appalling.

But the figures which we have just given are by no means all-inclusive. In addition to utilizing the regularly operated merchandise cars described in the above table, appli-

cant, in lieu of transporting freight over the highway, employs other merchandise cars which are not operated daily but are operated with frequency, in most instances every other day. During the month of February, 1943, for example, it utilized the following merchandise cars in addition to those already shown:

From	To	Number of Cars	Short Highway Distance One Way	Number of Tire-miles Saved each Day of Operation*	Tire-mile saving during February
			Miles		
Dallas, Tex.	El Paso, Tex.	15	634	12,680	190,200
Fort Worth, Tex.	Monahans, Tex.	11	357	7,140	78,540
Longview, Tex.	Shreveport, La.	19	59	1,180	22,420
Marshall, Tex.	Dallas, Tex.	16	147	2,940	47,040
Marshall, Tex.	Shreveport, La.	11	37	740	8,140
Texarkana, Ark.	Dallas, Tex.	15	185	3,700	55,500
Alexandria, La.	New Orleans, La.	15	187	3,740	56,100
Alexandria, La.	Shreveport, La.	17	126	2,520	42,840
					500,780

* Based on round trip and ten tires per unit.

We repeat for emphasis that the train service employed in handling motor-carrier shipments is rendered without extra man power or extra equipment over and above that regularly employed in the handling of rail freight.

530 FURTHER HEARING SHOULD BE GRANTED IF THE COMMISSION SHOULD REFUSE TO GRANT RECONSIDERATION.

We have high hopes that after study of the foregoing portions of our petition the Commission will concur in our view that Condition No. 3 should be eliminated, that the relevant rules of Tariff Circular No. 20 should be modified, that the necessary special permission should be granted as prayed, and that the finding of the Division in respect to Condition No. 1 should be rejected, but we earnestly pray that if by some ill chance the Commission should not concur in that view, it will grant us a further hearing, at which we are confident we can demonstrate beyond peradventure that, by the methods herein before outlined or by some substitute method, the coordinated service which the transport company and the railway are today furnishing in collaboration with the independent motor carriers is and for the future will be required by public convenience and necessity. Thus far the hearings have been held at intervals over a considerable period of years without benefit of any commitment by the Commission on the measure of authority which it felt had been granted or taken away by the imposition

of the conditions attached to the grants of authority; now for the first time we are appraised of the circumstances which the Division believes to be determinative. Knowing now how the Division regards the coordinated service and knowing too what it considers the obstacles to participation by the transport company (and the railway too if this petition should be denied), we submit that we could place the facts before the Commission on a consolidated record in such fashion as to impress upon it the value of the
531 present service in interchange at joint rates and the real need for its continuance unmolested.

In the interest of brevity we shall not attempt to repeat in detail all the factors which make the present service of such unquestioned value. All these factors are described at one place or another in earlier portions of this petition. We emphasize, however, that the latest of the records in any of these proceedings is now some years old and that the interchange service with independent motor carriers has expanded and become more important with the passage of the years. None of the individual records is fortified with the facts and figures concerning interchange with independent motor carriers or the volume of freight so interchanged If the sum total of such facts and figures can be presented on one consolidated record and if all the details of the superior coordinated service, viewed from the standpoint of such interchange arrangements, can be placed in evidence, it is indeed difficult to believe that the Commission will not be convinced of our demonstration that the present and future public convenience and necessity require and will require the proposed service *in interchange at joint rates with the independent motor carriers free of any of the restrictions which have thus far been imposed in contemplation of a much different character of operation.*

As proof that the Division itself, even while denying us the right, *under the certificates as now worded*, to participate in such joint rates in interchange with independent motor carriers, recognized the need for a lifting of those conditions *for this one purpose*, we quote once more the final paragraph of its report:

If petitioner desires authority to perform an unrestricted motor vehicle service over the routes and
532 between the points for which it now holds limited certificates *to the extent indicated above*, the proper procedure is to file a petition for further hearing on its application *to the extent indicated* for the purpose of establishing that *such service*, by petitioner, is or will be required by public convenience and necessity. (Emphasis ours.)

The italicized portions of the quoted paragraph remove any possible doubt that the Division, though feeling obligated to find as it did, sympathized with our claims and believed that we could substantiate them on further hearing.

THE IMPORTANCE AND COMPLEXITY OF THE ISSUES HERE PRESENTED MAKE ORAL ARGUMENT A REQUISITE.

Confessedly, the issues presented by these proceedings and by the instant petition are exceedingly complicated, and, as we have emphasized, the outcome is of paramount importance to your petitioners and to the shipping public which depends upon them for this unparalleled coordinated service. Knowing the tremendous volume of work under which the Commission is literally staggering, we are reluctant to add to its burden, but we sincerely feel that before it undertakes to pass final judgment it is entitled to have the facts placed before it orally, the better to proceed in a manner which will be fair both to petitioners and to itself. Accordingly, we respectfully request that all these proceedings be assigned for oral argument jointly on the issues raised by our petition.

533 PRAYER.

WHEREFORE, petitioners pray that the Commission will grant reconsideration and oral argument as requested and that following such reconsideration and oral argument, in order that equity may be done, it will:

(1) eliminate Condition No. 3 from the authority granted to the transport company in No. MC-50544 (Sub-Nos. 1, 3, 4, and 9, 21-TA, and 30-TA), and eliminate its substance from the authority granted in No. MC-50544 (Sub-No. 24-TA);

(2) provided it does not concur in what we say in the next succeeding paragraph of this prayer, modify Rules 30, 107(a), and 107(c) of Supplement No. 5 to Tariff Circular No. 20 to whatever extent it my deem necessary to permit the railway to become a party to Agent Hughett's substitution directory (with appropriate provision for optional substitution of truck for rail service) and to the tariffs making reference thereto in which are maintained the all-motor joint rates, and will grant special permission to the railway to participate therein in the manner stated;

(3) reverse the findings of the Division that, "to the extent petitioner holds certificates limiting the motor vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is without authority to perform service under all-motor local and all-motor joint rates with connecting motor carriers or to substitute rail service for

motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service," and find instead that, "to the extent the transport company
534 holds certificates limiting the motor-vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is empowered to perform service under all-motor local and all motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, is a proper party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service;"

(4) in consonance with the suggestion of Division 5 in the final paragraph of its report of January 21, 1943, grant further hearing in each of the cases herein embraced, including No. MC-50544 (Sub-Nos. 19, 21-TA, 24-TA, and 30-TA), if it does not concur in our conviction that what we ask may be consistently granted by the Commission on the records as already made;

(5) cancel any and all amendments which alter the terms of Special Permission R-M No. 2418 or, in the event further hearing should be granted, indefinitely extend Amendment No. 12 to the said special permission until final disposition of these proceedings can be had on further hearing;
535 (6) grant each other and further relief as in its wisdom it may deem meet.

Respectfully submitted,

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
THE TEXAS AND PACIFIC RAILWAY COMPANY,
Petitioners,
By WILMER A. HILL,
Their attorney.

Of counsel:
SAM W. LANCASTER,
M. E. CLINTON,
W. O. REED,
Texas & Pacific Building,
Dallas, Texas.

AMES, HILL & AMES,
238-241 Transportation Building,
Washington, D. C.

Dated at
238-241 Transportation Building,
Washington, D. C.
May 20, 1943.

CERTIFICATE OF SERVICE.

I hereby certify that I have this day served the foregoing petition upon all parties of record in these proceedings, by mailing by first-class mail a copy thereof, properly addressed with postage prepaid, to each other party.

Dated at Washington, D. C., this twentieth day of May, 1943.

.....

WILMER A. HILL.

536 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 14th day of February A. D. 1944.

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—WILLS POINT, TEX.

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING-PECOS, TEX.

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MARSHALL, TEX.

No. MC-50544 (Sub-No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE-FORNEY, TEX.

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING—HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS-EL PASO, TEX.

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—FORT WORTH, TEX.

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEX.

No. MC-50544 (Sub-No. 21-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
TATE COVE EXTENSION

No. MC-50544 (Sub-No. 24-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
TARRANT AIR BASE EXTENSION

No. MC-50544 (Sub-No. 30-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
POINT BLUE-CHATAIGNIER, LA., EXTENSION

Upon consideration of the records in the above-entitled proceedings, and of petition of the applicant and The Texas and Pacific Railway Company, dated May 20, 1943, entitled;

537 Petition in Behalf of Applicant and of The Texas and Pacific Railway Company for Reconsideration and Oral Argument; for Modification of Supplement No. 5 to Tariff Circular No. 20 and Specified Special Permission; or for Further Hearing

and good cause appearing:

IT IS ORDERED, That the said proceedings be, and they are hereby, reopened for further hearing at a time and place to be hereafter fixed, solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to The Texas and Pacific Motor Transport Company.

By the Commission, division 5.

W. P. BARTEL
Secretary

(Seal)

538 *Order*

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of February, A. D. 1944.

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—WILLS POINT, TEX.

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING-PECOS, TEX.

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MARSHALL, TEX.

No. MC-50544 (Sub-No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE-FORNEY, TEX.

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING-HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS-EL PASO, TEX.

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—FORT WORTH, TEX.

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEX.

No. MC-50544 (Sub-No. 21-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
TATE COVE EXTENSION

No. MC-50544 (Sub-No. 24-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
TARRANT AIR BASE EXTENSION

No. MC-50544 (Sub-No. 30-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
POINT BLUE-CHATAIGNIER, LA., EXTENSION

Upon consideration of the records in the above-entitled proceedings, and of petition of the applicant and The Texas and Pacific Railway Company, dated May 20, 1943, entitled;

539 Petition in Behalf of Applicant and of The Texas and Pacific Railway Company for Reconsideration and Oral Argument; for Modification of Supplement No. 5 to Tariff Circular No. 20 and Specified Special Permission; or for Further Hearing

and good cause appearing:

IT IS ORDERED, That said petition be, and it is hereby, denied except to the extent the said proceedings were reopened by Division 5 by its order of February 14, 1944.

By the Commission.

W. P. BARTEL
Secretary

(Seal)

540 Before the Interstate Commerce Commission

Docket No. MC-50544*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

Petition in Behalf of Applicant and The Texas and Pacific Railway Company for Cancellation of Further Hearings Ordered in the Commission's Division 5 Order of February 14, 1944, and for Permisison to Withdraw MC-50544, Sub. 11, from the Provisions of Both of the Orders of February 14, 1944, of the Commission and Division 5

August 5, 1944

541 To the Interstate Commerce Commission:

Comes now The Texas and Pacific Motor Transport Company, applicant in the proceedings contained in

* See Appendix attached.

the Appendix, hereinafter referred to as the applicant, and The Texas and Pacific Railway Company, hereinafter referred to as the Railway, and file this their petition for cancellation of further hearings and for permission to withdraw MC-50544, Sub 11, from the provisions of the two orders of the Commission, dated February 14, 1944. In support of said petition, petitioners would respectfully show that:

The Commission, by its order of February 14, 1944, denied the petition of the applicant and of Railway,
542 dated May 20, 1943, entitled:

> "Petition in Behalf of Applicant and of The Texas and Pacific Railway Company for Reconsideration and Oral Argument; for Modification of Supplement No. 5 to Tariff Circular No. 20 and Specified Special Permission; or for Further Hearing."

except to the extent that the said proceedings were reopened by Division 5 in its order dated February 14, 1944.

In the Division 5 Order:

> "It Is Ordered, That the said proceedings be, and they are hereby, reopened for further hearing at a time and place to be hereafter fixed, solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to The Texas and Pacific Motor Transport Company."

Applicant desires to call the Commission's attention to the fact that in applicant's petition, dated May 20, 1943, in addition to other requests, applicant specially requested that permission be granted the Railway to become a party to and be allowed to participate in the necessary all-motor tariffs (see page 29 and paragraph No. 2 on page 51 of petition). This request was denied, but applicant's alternative request to set all of the proceedings down for a hearing (provided the Commission did not agree with applicant's request that the Railway be permitted to become a party to the all-motor tariffs), was granted.

Subsequently, and while the above orders were
543 pending, applicant's and Railway's Agent, J. D. Hughett, filed his Sixth Section Application No. 4, 217th Section Application No. 609, pursuant to which special permission was granted by the Commission on May 18, 1944, being the Commission's Permission No. M-43103, No. 21008. Under this permission and authority, the Railway became a party to the all-motor tariffs and the neces-

sary publication has been made and became effective July 17, 1944.

Since the Commission has now granted applicant's request that Railway be allowed to become a party to the all-motor tariffs, there is no necessity for further hearings, and applicant respectfully requests that the Commission cancel the order of Division 5, dated February 14, 1944. Should future conditions make it necessary that the proceedings be re-opened, applicant will file an appropriate request therefor.

PETITIONERS REQUEST THAT MC-50544, SUB 11, BE WITHDRAWN FROM THE INSTANT PROCEEDINGS

It will be recalled by the Commission that MC-50544, Sub 11, was not included in the report that Division 5 rendered January 21, 1943, but petitioners included this proceeding in their petition dated May 20, 1943, because they believed the Commission's action thereon might include an original decision in the pending re-opened proceedings in MC-50544, Sub 11. This belief was in error
544 and MC-50544, Sub 11, should not have been included in the petition of May 20, 1943. Petitioners therefore respectfully request that MC-50544, Sub 11, be withdrawn from consideration in the instant proceedings, and that a decision be rendered commensurate with the facts and the law contained in the pending two separate hearings relating to MC-50544, Sub 11, heretofore had and arguments thereon contained in applicant's brief of April 30, 1943.

Respectfully submitted,

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
THE TEXAS AND PACIFIC RAILWAY COMPANY
Petitioners

By: M. E. CLINTON
ROBERT THOMPSON
W. O. REED

I hereby certify that I have this day served the foregoing petition upon all parties of record in these proceedings, by mailing by first-class mail a copy thereof, properly addressed, with postage prepaid, to each other party.

Dated at Dallas, Texas, this 5th day of August, 1944.

W. O. REED
Of Counsel

545 *Appendix*

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—WILLS POINT, TEXAS

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING—PECOS, TEXAS

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MARSHALL, TEXAS

No. MC-50544 (Sub-No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE—FORNEY, TEXAS

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING-HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS-EL PASO, TEXAS

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—FORT WORTH TEXAS

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEXAS

No. MC-50544 (Sub No. 21-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
TATE COVE EXTENSION

546 No. MC-50544 (Sub-No. 24-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
TARRANT AIR BASE EXTENSION

No. MC-50544 (Sub-No. 30-TA)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
POINT BLUE-CHATAIGNIER, LA., EXTENSION

548 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of August, A. D., 1944

No. MC 50544

THE TEXAS & PACIFIC MOTOR TRANSPORT CO.

No. MC 50544 (Sub No. 1)

THE TEXAS & PACIFIC MOTOR TRANSPORT CO.—LOUISIANA

No. MC 50544 (Sub No. 2)

THE TEXAS & PACIFIC MOTOR TRANSPORT CO.—
WILLS POINT, TEXAS

No. MC 50544 (Sub No. 3)

THE TEXAS & PACIFIC MOTOR TRANSPORT CO.—
BIG SPRING-PECOS, TEXAS

No. MC 50544 (Sub No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
MARSHALL, TEXAS

No. MC 50544 (Sub No. 5)

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
DALLAS-ABILENE, TEXAS

No. MC 50544 (Sub No. 6)

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
ABILENE-BIG SPRING TEX.

No. MC 50544 (Sub No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO. -
ALTERNATE ROUTES

No. MC 50544 (Sub No. 8)

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
DALLAS-WILLS POINT, TEX.-GLADEWATER,
TEX.-SHREVEPORT, LA.

No. MC 50544 (Sub No. 9)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
MESQUITE-FORNEY, TEXAS

No. MC 50544 (Sub No. 10)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
BIG SPRINGS-HOBBS

No. MC 50544 (Sub No. 11)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
PECOS-EL PASO, TEXAS

No. MC 50544 (Sub No. 12)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
TEXARKANA, TEX.-ARK.-FORTH WORTH, TEXAS

No. MC 50544 (Sub. No. 14)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
FORT WORTH, TEXAS

No. MC 50544 (Sub No. 19)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
ALEDO, TEXAS

No. MC 50544 (Sub No. 21)—TEMPORARY AUTHORITY
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
TATE COVE EXTENSION

No. MC 50544 (Sub No. 22)
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
DALLAS-FORT WORTH, TEX.

No. MC 50544 (Sub No. 24)—TEMPORARY AUTHORITY
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
TARRANT AIR BASE EXTENSION

No. MC 50544 (Sub No. 30)—TEMPORARY AUTHORITY
THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.—
POINT BLUE-CHATAIGNIER, LA.

Upon consideration of the records in the above-entitled proceedings, and of the petition of applicant, dated August 5, 1944, to vacate the orders of February 14, 1944, and February 21, 1944, reopening the proceedings for further hearing; and good cause appearing therefor:

It is ordered, That said petition be, and it is hereby, denied;

And it is further ordered, That the said matters be, and they are hereby, referred to Examiner David Waters for

further hearing on the 17th day of October, A. D., 1944, at 9:30 o'clock a. m., at the Baker Hotel, Dallas, Texas, solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to the Texas and Pacific Motor Transport Company.

By the Commission, division 5.

(SEAL)

W. P. BARTEL,
Secretary.

550 Before the Interstate Commerce Commission

MC 50544 and Sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19, 21-TA, 22, 24-TA and 30-TA

In the Matter
of
The Application of THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY for Orders Defining Its Rights Under Certain Certificates or Alternate Relief

Transcript of Hearing

Peacock Terrace,
Baker Hotel,
Dallas, Texas,

October 17 1944. 9:30 A. M.

Before: DAVID WATERS, *Examiner.*

Hearing reopened pursuant to notice.

APPEARANCES:

As heretofore noted.

ADDITIONAL APPEARANCES:

W. O. REED, 918 T. & P. Building, Dallas, Texas, and J. T. SUGGS, 922 T. & P. Building, Dallas, Texas, appearing on behalf of The Texas & Pacific Railway Company and The Texas & Pacific Motor Transport Company, applicants.

FRANK C. BROOKS, 1900 Mercantile Bank Building, Dallas, Texas, appearing for Dallas-Ft. Worth Motor Freight Lines; East Texas Motor Freight Lines; English Freight Company, Gillette Motor Transport, Inc.; Herrin Transportation Company; Houston & North Texas Motor Freight Lines, Inc., and Northeast Texas Motor Lines, Inc., as their interests may appear.

551 FRANK H. RAWLINGS, Century Building, Fort Worth, Texas, appearing on behalf of H. E. English, doing business as Red Ball Motor Freight Lines, as his interest may appear.

CECIL A. MORGAN, 806 First National Building, Fort Worth, Texas, appearing on behalf of Braswell Motor Freight Lines, protestant.

ED P. BYARS, 115 East 9th Street, Fort Worth, Texas, appearing on behalf of Fort Worth Freight Bureau and Fort Worth Chamber of Commerce, in support of applicants.

RALPH W. CURRIE, 1013 Praetorian Building, Dallas, Texas, appearing on behalf of Dallas Chamber of Commerce, in support of applicants.

ROBERT J. MCBRIDE, 1424 16th St., N. W., Washington, D. C., appearing for Regular Common Carrier Conference of the American Trucking Association, Inc., as its interest may appear.

C. M. MULHOLLAND, 1041 Nicholas Building, Toledo, Ohio, appearing on behalf of Railway Labor Executives Association, as its interest may appear.

J. P. MCCLUSKEY, Jefferson Hotel, Dallas, Texas, appearing on behalf of Brotherhood of Railway Clerks and Texas & Pacific System Board of Adjustment, as their interest may appear.

W. M. CONWAY, 1124 Cleckler Street, Fort Worth, Texas, appearing on behalf of Brotherhood of Locomotive Engineers, Texas State Legislative Board, as its interest may appear.

552 W. H. WINCHESTER, 214 Littlefield Building, Austin, Texas, appearing on behalf of Brotherhood of Locomotive Firemen and Enginemen, Texas State Legislative Board, protestant.

JOE T. STEADHAM, 210 Littlefield Building, Austin, Texas, appearing on behalf of Brotherhood of Railroad Firemen, as their interest may appear.

554 PROCEEDINGS

Colloquy Between Examiner and Counsel

Exam. WATERS: Come to order, please.

It is the practice of the Commission not to permit smoking in the hearing room.

The Interstate Commerce Commission has set for hearing at this time and place docket number MC-50544, The Texas & Pacific Motor Transport Company, and the fol-

lowing sub numbers: Sub Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19, 21-TA, 22, 24-TA, and 30-TA. These dockets are reopened for the purpose solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to the Texas & Pacific Motor Transport Company.

Who appears for the applicant?

Before entering appearances, I might say that those who have already entered appearances at the hearing on February 11, 1942, before Examiner Borroughs, need not do so at this time.

Mr. REED: In that connection, Mr. Examiner, I would like to enter the appearance of one other who was not in the hearing at that time. That is J. T. Suggs, for the Texas & Pacific Motor Transport Company, who is a registered practitioner before the Interstate Commerce Commission, and who is present at this time.

Was Mr. M. E. Clinton named in that, or was it just W. O. Reed and S. W. Lancaster?

555 Exam. WATERS: Reed and Lancaster.

Mr. REED: Then I would like to enter the appearance of Mr. M. E. Clinton for the Texas & Pacific Motor Transport Company, who is a practitioner before the Interstate Commerce Commission, but who is not here at this time. However, he is supposed to appear in the hearing, and will be here later.

Exam. WATERS: In connection with the appearance of Mr. Suggs, this slip shows Texas & Pacific Railway Company.

Mr. REED: It should be both.

Exam. WATERS: Do you want to add that on?

Mr. REED: Yes.

Exam. WATERS: Is that all of the appearances for the applicant?

Mr. BYARS: Do you desire the appearances now for those supporting the application?

Exam. WATERS: Yes, we will take appearances of those in support of the application.

Mr. CURRIE: Ralph W. Currie, 1013 Praetorian Building, Dallas 1, Texas. I am an attorney and admitted to practice before the Interstate Commerce Commission. I appear at this hearing in behalf of the Dallas Chamber of Commerce in support of the applicant.

Mr. Byars: Ed P. Byars, 115 East Ninth Street, Fort Worth, appearing for the Fort Worth Freight Bureau and Fort Worth Chamber of Commerce, in support of
556 the applicants. I am a registered practitioner before the Commission.

Exam. Waters: Are there any other appearances in support of the applicant?

Any appearances in opposition to the applicant?

Mr. Mulholland: Mr. Examiner, I would like to enter an appearance. C. M. Mulholland—

Exam. Waters: I believe we have your appearance, Mr. Mulholland.

Mr. Mulholland: Yes.

Exam. Waters: Is there any change in that?

Mr. Mulholland: No, except I would not want the record to show at this time that we are in opposition to the applicant. We are participating as our interest may appear.

Exam. Waters: At this time, I will take those who are in opposition to the applicant.

Mr. Morgan: Mr. Examiner, we did not appear two years ago, but we have filed our formal appearance here. Cecil A. Morgan, 806 First National Bank Building, Fort Worth, Texas. I am an attorney, and licensed to practice before the Commission, and am appearing on behalf of Braswell Motor Freight Lines.

Mr. Steadham: Mr. Examiner, I think we are already in the case, the Brotherhood of Railroad Trainmen, or the four transportation brotherhoods?

Exam. Waters: No, sir, just the Railway Labor Executives Association, represented by Mr. Mulholland.
557 Mr. Steadham: I would like to enter the appearance of the Brotherhood of Railway Trainmen; Brotherhood of Locomotive Engineers; Brotherhood of Locomotive Firemen and Enginemen, and the Order of Railway Conductors. Joe T. Steadham, 210 Littlefield Building; W. M. Conway—that is Austin, Texas—W. M. Conway, 1124 Cleckler Street, Fort Worth, and W. H. Winchester, 214 Littlefield Building, Austin, Tex.

Exam. Waters: Will you put your name on this appearance, please?

Mr. Rawlings: Frank H. Rawlings, Century Building, Fort Worth, Texas, appearing for H. E. English, doing business as Red Ball Motor Freight Line of Dallas, Texas. At this time I don't know whether I am a protestant or just

appearing as an intervener, because I don't know what the issues are.

Exam. WATERS: You are a practitioner, Mr. Rawlings?

Mr. RAWLINGS: Yes, sir, I am an attorney, and I have a license to practice before the Interstate Commerce Commission.

Mr. MCBRIDE: R. J. McBride, 1424 Sixteenth Street, Northwest, Washington, D. C. I am admitted to practice before the Commission. I wish to participate in this proceeding in behalf of the Regular Common Carrier Conference of the American Trucking Associations, Inc. I don't know yet, Mr. Examiner, what our position will be, and will not know until the issues are decided upon.

Mr. BROOKS: Carl B. Calloway and Frank C.
558 Brooks, 1900 Mercantile Building, Dallas, Texas, appearing for Dallas-Ft. Worth Motor Freight Lines; the East Texas Motor Freight Lines; English Freight Company; Gillette Motor Transport, Inc.; Herrin Transportation Company; Houston & North Texas Motor Freight Lines, Inc. and Northeast Texas Motor Lines, Inc., as their interest may appear. Both Mr. Calloway and myself are licensed attorneys, and licensed to practice before the Interstate Commerce Commission. Mr. Calloway is not present in the room, but his train arrives around noon, and he expects to be here at that time.

Exam. WATERS: Any other appearances?

Is Mr. McCluskey here?

Mr. MCCLUSKEY: Yes, sir.

Exam. WATERS: Did you enter your appearance?

Mr. MCCLUSKEY: J. P. McCluskey, appearing in behalf of the Brotherhood of Railway Clerks, as our interest may appear.

Exam. WATERS: Is this your permanent address, Jefferson Hotel?

Mr. MCCLUSKEY: Yes. We made an appearance before in the name of L. C. Stanton.

Exam. WATERS: I don't see it in this docket of February, '42.

You gentlemen who are appearing in behalf of labor organizations do that by virtue of your positions with those organizations?

559 Mr. STEADHAM: That is right, yes, sir.

Exam. WATERS: Are there any further appearances?

Is the applicant ready to proceed?

Mr. REED: Yes, sir. We desire, however, to make an inquiry, and possibly a statement of the issues, as we see them, before we begin.

Exam. WATERS: Very well.

Mr. REED: We are ready for that part, anyway.

Exam. WATERS: Go right ahead.

Mr. REED: Mr. Examiner, in the beginning, the Texas and Pacific Motor Transport Company,—I don't know whether to call it an applicant in this particular proceeding or not, as will be shown later, but we desire to know at this time the purpose of the further hearing in this matter, and would specifically ask at this time if the Examiner could enlighten us as to that purpose?

Exam. WATERS: Well, all I can tell you, Mr. Reed, is what is set forth in the notice of the hearing. As I understand it, this proceeding arose out of a petition that was originally filed by the Texas and Pacific Motor Transport Company, and the hearing was held on this originally in February, 1942, before Examiner Borroughs, and then a report was issued on January 21, 1943, clarifying the operating rights of the Texas and Pacific Motor Transport Company, and after that report was issued, another petition was filed by the Texas and Pacific
560 Motor Transport Company on May 20, 1943, seeking further relief, and following that, why the proceedings were reopened for further hearing,—

Mr. REED: Yes, sir.

Exam. WATERS: Which is being held today.

Mr. REED: Well, then, this further hearing is, then, following the request made in the Motor Transport Company's petition dated May 20, 1943; is that correct?

Exam. WATERS: Yes, sir.

Mr. REED: We desire then, Mr. Examiner, to make this preliminary statement for the record, that we are not in the position of making any argument, and do not intend to make one at this time, and anything that I say that tends to be an argument, it is not intended that way at all. It is simply a statement. I think our position is simply this:

After the order of January 21, 1943, as rendered by Division 5, the Commission admonished the T. & P. Motor Transport Company to change certain operations. It stated that they would not enter an order at that time. Insofar as I know, the Commission has never entered a final order. Now, after that date, the Texas & Pacific Motor Transport Company filed its petition of May 30, 1943,—

Exam. WATERS: May 20th.

Mr. REED: May 20, 1943, and in that petition asked, as is shown on the record, that the Commission, among
561 other things, grant to the Texas & Pacific Railway Company permission to enter into the truck tariffs. We also asked for modifications or changes in condition number three, as developed, or as it appeared in our various certificates. As an alternative proposition, we requested that if the Commission did not agree with us, that they set all cases down for a hearing. On February 14th, the entire Commission denied that petition, and on the same date Division 5 of the Commission set the cases down for a hearing.

Now, after that date, or some time around or about June, 1944, the T. & P. Motor Transport and the Texas & Pacific Railway, joining together, did secure permission from the Commission for the Texas & Pacific Railway Company to become a party to the motor carrier tariffs. The Commission granted that permission, and subsequently the Texas & Pacific Railway Company did become a party to the motor carrier tariffs. That was one of the main contentions that we asked for in our petition of May 20, 1943, which was denied by the Commission. In other words, it was denied on one hand, and at a later date was granted, and today the Texas & Pacific Railway Company, in certain cases, has entered the tariffs of the motor carriers.

It will be recalled that in the order of January 21, '43, the Texas & Pacific Motor Transport Company's operation was defined, and was outlined, and it was called to our attention that we should cease certain operations, such
562 as the motor transport company issuing bills of lading, and things of that sort, as is set forth in the order, and of course we all have notice of that.

Now, on August 5, 1944, the Texas & Pacific Motor Transport Company petitioned the Commission, outlining to them that since the Commission had granted the very thing that we asked for on May 20th, 1943—that is, allowing the Texas & Pacific Railway Company to become a party to certain motor carrier tariffs,—that no further hearings be held, pointing out, as I recall, that the further hearing was merely an alternative request, should the Commission deny all other requests. That petition was denied on August 30th, which resulted in this hearing today.

Now, in asking the question in the beginning, Mr. Examiner, as to what the purpose of the hearing is, or why the

necessity for a hearing, it was asked for the purpose of explaining to the Commission and to the Examiner our position in this particular matter. The position of the Texas & Pacific Motor Transport Company is simply this: That we are desiring no change in the certificates that we now hold. There is one exception, that of sub 11, which I will go into at a different time, because it has never been finally acted upon by the Commission, but in the main, the Texas & Pacific Motor Transport Company is simply in this position, that it does not desire any change in the conditions; it does not desire any removal of any conditions, but simply desires to be allowed to operate as it is
563 doing today, since the Texas & Pacific Railway has become a party to the motor carrier tariffs.

That, Mr. Examiner, is our position, just simply stated, that there are no changes desired, and we would like to know, if it is possible to determine at this time, what changes it is that the Commission has in its mind to be made in the certificates, because naturally, with that understanding, and with that feeling about the matter, the motor transport company particularly feels that it has not asked for a rehearing, except as an alternative proposition, which was later cured, and we attempted to withdraw it, and was denied, and since we are in the position of being satisfied at the present time, we are a little at a loss as to how to proceed, or what information at this time to give to the Commission.

Exam. Waters: Well, as far as I know, the Commission has no idea as to what these conditions should be. I think that that is a matter for the applicant, because it is primarily in the interest of the applicant, and the Commission, I am sure, has no fixed position in regard to these conditions,—that is, no preconceived idea as to what they should be. It all depends on the circumstances.

Mr. Reed: There is one other thing that tends to confuse the transport company, and it is this: That it will be noted that originally, that is the hearing held February 11, 1942, included MC-50544, and subs 1, 2, 3, 4, 7, 9, 10 and 14.
564 Now, in our petition filed May 20, 1943, were included subs 11, 19, 21-TA, 24-TA and 30-TA. We, you might say, arbitrarily included those because whatever was going to happen, we wanted those certificates also changed, if any change was necessary. Now for the first time, in the notice dated August 30th, setting this hearing today, you will find subs 5, 6 and 8. Now, nowhere has the ap-

plicant or the motor transport company ever asked for any clarification on those three subs, or any change, or raised any question about them at all. Yet, we find for the first time in this notice, those three included.

Exam. WATERS: Well, I would say that those three were included for the purpose of including all of the operations that were existing, that the T. & P. Motor Transport Company was authorized to conduct, and that was the reason for including those three. In other words, when these proceedings were set for further hearing, the objective was to include all of the outstanding authorities that had been issued.

Mr. REED: Yes, sir.

Exam. WATERS: And also this one that is pending, sub 11.

Mr. REED: Yes, sir.

Exam. WATERS: On which no final decision has been made.

Mr. REED: Well, in that connection, Mr. Examiner, there are still other sub numbers that have never been included in the hearings, in any of the hearings. I think, for the record, it might be well that we give those at this
565 time. Subs 26-TA, 27-TA, 28-TA and sub 29-Ta.

Exam. WATERS: Do those TA's carry an expiration date. Do you know?

Mr. REED: Yes, sir, they carry an expiration date.

Exam. WATERS: Then those TA's were probably omitted with the thought that since they carry an expiration date, that whatever changes should be found necessary could be made subsequently.

Mr. REED: I see. Of course some of the other TA's that were included also carry expiration dates.

Exam. WATERS: I think the explanation there is they were included because they were mentioned in the petition.

Mr. REED: Undoubtedly that is correct.

Exam. WATERS: The petition of May 20, 1943. Does this notice of hearing include all of the permanent authorities that the motor transport company has?

Mr. REED: Yes, sir, I think that is correct, yes, sir.

Will you excuse us just a moment?

Exam. WATERS: Yes, sir. We will take a short recess.

(Short recess.)

Exam. WATERS: Are you ready?

Mr. REED: Mr. Examiner, since the motor transport company has withdrawn its request for a further hearing in its petition dated August 5, 1944, and since the position has

been stated that they desire no change in any of the
566 conditions, or in any of the certificates, we would like to inquire at this time whether or not, since the motor transport company desires no change, if it is contemplated by the Commission the making of any change in the certificates that the motor transport company now holds?

Exam. WATERS: Well, as far as I am able to advise you, no change is contemplated, except such as might develop as a result of whatever evidence is produced here.

Mr. REED: Well, that, of course,—

Mr. SUGGS: Mr. Commissioner, or Mr. Examiner, rather, if no changes are contemplated by the Commission, in the absence of any showing here for the necessity for such changes, with the Examiner's permission, we would just as soon abandon the hearing, because that is all we want, is simply to be left as is.

Exam. WATERS: Well, the matter has been set for hearing, and since you just want the certificates to stand as they are, or so that you can operate as you are operating at the present, it seems to me that if you explain your present operations, that would be sufficient, and then if the parties have any objections, it would clarify the matter.

Mr. SUGGS: Would you like for us to tender a witness that could explain our operations? We are prepared—I may say this, that we are prepared to furnish the Examiner with information as to our operations, and
567 some evidence that we don't want any change, but that is all of the preparation we have made.

Exam. WATERS: Well, the proceedings are reopened for the benefit of the applicant, or the T. & P. Motor Transport Company, and not for the benefit of the Commission, and of course whatever action is taken will depend on whatever record is made here by the motor transport company.

Mr. SUGGS: And the action will depend altogether on this record here?

Exam. WATERS: And the one in the hearing in February of '42.

Mr. SUGGS: Does the Examiner desire that we furnish a witness to explain the operation at this time?

Exam. WATERS: Yes, sir.

Mr. REED: Come around, Mr. Huffman.

T. E. HUFFMAN, was sworn as a witness at this juncture.

Mr. RAWLINGS: Mr. Examiner, before you start in on the testimony, may I make an inquiry as to the purpose of this testimony? It is my understanding from the statement of counsel representing the applicant here that they seek no change in their present operating authority, no mod-
568 ification or elimination of any of the restrictions. Is that correct?

Mr. REED: That is correct.

Mr. RAWLINGS: Then the only purpose of this testimony will be to show the Commission how they are presently operating, and not for the purpose of making any changes or modifications in the restrictions that are now contained in the operating authority? Is that correct?

Exam. WATERS: The purpose of the testimony is to show what the T. & P. Motor Transport Company is doing now, and find out whether any of the parties here object to it, and then, on that record, it will be up to the Commission to decide what to do about it. I have no idea about what they will do.

Mr. RAWLINGS: That is where I get lost in the proceedings. I understand from the statement of counsel for applicant that they are seeking no modification or amendment of the present operating authority, and that being true, the client I represent, has no protest to offer. If you are opening this case up on this testimony with the view of changing or modifying or eliminating any restriction, that puts a different aspect on the hearing. The applicant having stated on the record that they seek no modifications, and that they want to withdraw their original application, I don't understand the purpose and effect of the testimony that is now being adduced, unless the Commission has some suspicion that they are not operating
569 in keeping with their restrictions, which would be an enforcement problem rather than a modification of the authorities. I just want to get clear on the record, so I will know how to represent my client here.

Exam. WATERS: I don't think the Commission has any suspicion that they are doing anything they are not supposed to do. I am not qualified to speak for the Commission, but it would seem to me that if they were operating unlawfully, we would have had some complaint before this.

Mr. RAWLINS: I don't see that that is properly in this proceeding here, and therefore I don't understand why you have to have some testimony to reaffirm the authority they already have, when nobody is trying to make any change in it.

Exam. WATERS: There is no change contemplated in the certificates, in the routes, or points between which they operate. There may be some change in the conditions. That depends on what is introduced here.

Mr. RAWLINGS: Well, there has been no issue made. I am not trying to argue with you, but—

Exam. WATERS: Yes.

Mr. RAWLINGS: —I am trying to clarify it. The applicant says they don't want any changes made, and the protestants are not asking for any changes to be made that I know anything about, and the applicants ask to withdraw their application and close the hearing, so it looks like we are
570 trying to make an issue where none exists.

Exam. WATERS: Well, I don't know that they—that is, the Commission,—have any knowledge of just how the applicant is operating. Maybe if they had that knowledge,—

Mr. RAWLINGS: They have knowledge of their present operating authority, and it is presumed they are operating in keeping with the authority they have, so I don't know what purpose the hearing will serve. I presume they are operating lawfully, within the terms of their authority, so I don't know why they have to have a hearing and some testimony to see whether or not they are operating properly under the authority they have in their present operation, when there is no complaint about their operations. In other words, I just don't know what the issue is, and I want to know what the issue here is so I will know how to keep up with it. Right now I am lost. I don't know what it is.

Exam. WATERS: As I see the issues, this matter is set for the purpose of seeing what the motor transport company is doing now. They say they want to continue to operate as they are at present, and with that explanation, when they explain what they are doing now, if that satisfies the parties, why, probably that would be the end of it.

Mr. RAWLINGS: Well, wouldn't this—I will take my seat in just a minute, but wouldn't this satisfy you on the record, that if the operating testimony of the ap-
571 plicants, if they say they are now operating in conformity with their present authority, and seek no additional changes, wouldn't that just about close the books on it? In other words, I don't see any purpose in having a long winded hearing here explaining in detail the operations within their present authority, if there is no issue about it.

Mr. BYARS: Mr. Examiner, we are in the same boat. We are not asking for any change. We know what their opera-

tions are. It seems to me that if the Commission wanted to hear it all over again, what they have already heard about their operations in these previous cases, if they are not satisfied with it, and somebody wanted to bring up something else to object about, the Commission's notice should have been to the applicant, requiring the applicant to show cause why there should not be certain changes made, so that we would all know what we are shooting at here.

Mr. MORGAN: Mr. Examiner, I believe I am one of the parties that entered an appearance as a protestant, and on behalf of Braswell Motor Freight Lines, I entered such an appearance without knowing what was coming up. Now, since counsel for the T. & P. Transport Company has made his statement, it occurs to me that there actually is no issue between us, and in view of his statement, we are prepared to say that we will join in his motion to dismiss this proceeding. It occurs to me that that is one way we can
572 expedite this matter in its entirety. There is nothing before us, and as one of the protestants in the matter, in view of his statement that they propose to continue operations as they now are operating, we just join in the motion to dismiss, and in that fashion we can clarify this without any delay, it seems to me.

Mr. STEADHAM: Mr. Examiner, I would like to ask a question.

Exam. WATERS: Yes, sir.

Mr. STEADHAM: Is there a time limit on the present operation?

Exam. WATERS: Not on the permanent authority.

Mr. STEADHAM: Not on the permanent authority?

Exam. WATERS: On those that are on the temporary authorities, I believe they will expire December 31, 1944, unless they are renewed at that time.

Mr. STEADHAM: I was under the impression, from what the Examiner stated, that the present authority was about to expire, and that at this time you proposed to find out whether or not they wanted to continue the present operation.

Exam. WATERS: No, most of the authority that has been granted is permanent in nature. There are only a few temporary authorities, which cover only small segments.

Mr. STEADHAM: We would like to join with the other proponents in asking that the case be dismissed then.

Mr. MORGAN: You join in our motion then, is that it, Mr. Steadham?

573 Mr. STEADHAM: Yes.

Mr. CURRIE: Mr. Examiner, I am Ralph Currie, and I represent the Dallas Chamber of Commerce, the public interest in this proceeding. In view of the statements that have been made, and in view of the lack of any issue here, and since everybody seems to be of the same mind, including the client that I represent, we are glad to join in the motion to discontinue the proceeding, as made by counsel for the motor lines and joined in by the labor organizations.

Mr. BYARS: An for the interests I represent, I certainly join in the motion, Mr. Examiner.

Mr. SUGGS: We would like to renew our motion at this time then, Mr. Examiner. Of course we hadn't known before this morning of this concurrence, but it appears now that every interest represented here, the labor organizations, the chambers of commerce, competing independent motor carriers,—every interest that could appear,—join with us in asking that the hearing be cancelled, because all we want to do is to stay as is, operating under our present authority.

Mr. RAWLINGS: In view of the state of the record at present, I desire to join in the motion to dismiss. I don't think my statement before was specific on that, but in view of the present record up to this time, I join in the motion to dismiss, Mr. Examiner.

Mr. MULHOLLAND: Mr. Examiner, I don't feel that
574 I can join in the motion, but the clients I represent are not at this time insisting that any hearing be had of the nature contemplated here this morning.

Exam. WATERS: Are there any further remarks about this matter?

Mr. BROOKS: Mr. Examiner, I don't think I am in a position to join in the motion because my clients intervened merely as their interest may appear, and if there is no hearing, we have no interest. If I am in a position to join in the motion, in view of how I am in the case, I join in the motion.

Mr. STEADHAM: I might say on behalf of the transportation brotherhoods, we opposed the application in its original hearing, and after the Commission granted the authority, why, we have no further interest in the matter, unless there is a motion made to cancel the operation, or if the application is going to expire. Then we would like to be heard again, and try to show cause why it should not be cancelled.

Exam. WATERS: Well, gentlemen, this presents an unusual situation. As for as I know, this is the first case of

its kind, and it was instituted as a result of applicant's petitions, and not on any *ex parte* action on the part of the Commission, and since the case has been set for hearing, and since all of the parties have come here, I think that in the circumstances, we should develop what the applicant is doing now, as a basis for any further proceedings or
575 further discussion here, so at this time I will overrule the motions.

Mr. REED: The Examiner understands, of course, when he states that the hearing was brought about at the request of the T. & P. Motor Transport Company, that that was done, of course, as is shown in our brief of May 20, '43, as an alternative proposition, provided only that the Commission did not agree with our contentions therein. As I stated a while ago, at a later date they did agree with us, and at a later date did allow the very thing that we asked for, or one of the very things, and that was to let the Texas & Pacific Railway Company become a party to the motor carrier tariffs, and then we requested in our petition that no further hearing be had, and there was no necessity for it, and that is our position today.

We make this contention, and we feel that we are in this position, that since the Commission has granted the Texas & Pacific Motor Transport Company the right—I mean the Texas & Pacific Railway Company the right to become a party to the motor carrier tariffs, and we are operating in that manner now, that the Motor Transport Company is satisfied, and there is no occasion for any further hearing, and we again want to say that we do not desire it. We have asked that it not be held, and feel that we are—that we did not request it in the beginning, but only as an alternative only.

Mr. Examiner, as you have remarked, it is an unusual situation, and we are somewhat at a loss as to how to proceed.

576 Mr. SIGGS: Mr. Examiner, we are somewhat confused here. Could we have a recess for conference with the parties here for a few minutes, please?

Exam. WATERS: All right.

Mr. REED: Thank you, sir.

(Short recess.)

Exam. WATERS: Are you ready to proceed, Mr. Reed?

Mr. REED: Mr. Examiner, I would like to withdraw the witness Huffman, and make this statement: In view of the statements made here this morning, and in view of the record made this morning, the Texas & Pacific Motor Transport Company offers no evidence at the hearing.

Mr. CURRIE: Mr. Examiner, the Dallas Chamber of Commerce has nothing to offer.

Mr. BYARS: Mr. Examiner, the Fort Worth Freight Bureau and Fort Worth Chamber of Commerce have nothing to offer.

Mr. RAWLINGS: In view of the developments on the record this morning, I desire to offer no testimony at this time.

Mr. McBRIDE: This is McBride speaking for the Regular Common Carrier Conference. I join in the statement offered by Mr. Rawlings.

Mr. MORGAN: On behalf of our clients, we have no testimony to offer.

Mr. BROOKS: My clients have no testimony to offer.

Mr. MULHOLLAND: We have no testimony to offer.

577 Mr. STEADHAM: The transportation brotherhoods have none, Mr. Examiner.

Exam. WATERS: At this time, I believe, since Mr. Huffman has been on the stand, that I should not permit his withdrawal. I think that he should outline briefly, or as fully as he desires, the present operations of the applicant as a basis for a record in this case.

Mr. REED: Mr. Examiner, the operations are as explained in the February 11th, 1942, hearing. The operations have been explained in all of the cases heretofore held before the Interstate Commerce Commission.

Exam. WATERS: Well, in view of the petitions that have been filed, I believe it would be well to bring them up to date, and just state how they are conducted now, so that then everybody would be advised as to what is being done.

Mr. REED: The only change that has been made since the hearing of February 11, '42, is the permission I have heretofore mentioned, that the Commission has granted to the Texas & Pacific Railway Company to become a party to the motor carrier tariffs.

Exam. WATERS: Let's have Mr. Huffman explain how the T. & P. Motor Transport is operating.

Mr. SUGGS: We want to make the record very clear on it, Mr. Examiner, that we don't offer Mr. Huffman as a witness. Of course Mr. Huffman is here; if the Exam-

578 iner cares to call him, but we do not offer him as a witness.

Exam. WATERS: He has already been put on the stand and sworn, and I think he should give some testimony before he is withdrawn, under the circumstances of this case.

Mr. REED: The Examiner then did not grant our request to withdraw the witness a moment ago?

Exam. WATERS: No.

Mr. REED: All right, Mr. Huffman, the Examiner has ruled that you have not been withdrawn as a witness, and you are still on the stand.

The WITNESS: May I ask one question?

Mr. REED: And since Mr. Huffman is still before the Examiner, and has not been withdrawn, Mr. Examiner, we have no questions to ask him.

Exam. WATERS: Well, if Mr. Huffman will take the stand, I will ask him some questions, unless some of the parties have some questions to ask.

Mr. CURRIE: We have none.

Mr. BYARS: We have no questions to ask the witness.

Mr. BROOKS: Nor have we.

Mr. RAWLINGS: Mr. Examiner, before any interrogation starts, I don't know whether this is interrogation by the Commission or not, but we want to object to any testimony going into the record in this proceeding, in view of the statements that have been made up to this time, which
579 leaves the record in this shape, that there are no issues before the Commission to be settled or determined, and we object to any testimony going into the record, in view of the condition of the record up to this time, the application having been withdrawn by the applicant, and no testimony has been offered by the applicants, and none offered by the protestants, and we therefore think that this testimony is unjustified and uncalled for, and serves no purpose, and there are no pleadings here to support it, and we simply object to encumbering the record with any additional statements that might be considered as testimony for any purpose.

Exam. WATERS: Since the matter has been set for hearing, I will overrule your objection.

Mr. RAWLINGS: May I make this inquiry? I don't want to argue with the Examiner about it. I realize you have had it set for hearing, but a lot of lawsuits have been set for hearing, and the plaintiff has dismissed his suit, and there is nothing to hear, and as I understand the issues here, as developed here, there is no issue left in this case to hear, because the applicant has withdrawn his application, and the protestants have all joined him, and there is nothing before the Commission to be tried. There is no issue to be tried. That is the reason I urge my objection against encumbering the record with any further testimony or statements. You have got to have some pleadings

580 to make an issue; you have got to have some pleadings to justify the introduction of evidence, and the application having been withdrawn, and the applicants having abandoned the petition, there is just no issue to be tried, and I am a part of this record, and I don't want to be bound by any statements made by anybody now on the record as evidence, because there isn't anything here to support it.

Exam. WATERS: The applicant presented its position in the petition that was denied by the entire Commission in August, 1944, and the matter was set for hearing, so under the circumstances, I think that the Commission would like to know how the operations are being conducted.

Mr. REED: Mr. Examiner, I hate to be continually placing myself before the Examiner here, but this notice was not calling for any information about how we conduct our operations. The hearing of February 11, 1942, went into that, and it was explained to them. This hearing here is solely to determine what, if any,—if any,—changes or modifications should be made in the conditions contained in the outstanding certificates. We desire none.

Exam. WATERS: This is a further hearing, a continuation of that of February, 1942, so that I believe at this time it would be well to bring the matter up to date as to the operating practices of the T. & P. Motor Transport Company.

Mr. REED: Our position is still, Mr. Examiner, that
581 there is nothing to bring up to date.

Exam. WATERS: I think the record shows the position of the applicant and the other parties.

Mr. REED: We didn't—

Exam. WATERS: It has been explained at length.

Mr. REED: We did not make the motion, that is not the objection to any further proceedings being undertaken at this time, because we didn't—we were in a rather peculiar position. We don't want to be just hard headed about it, but I think for the record we are compelled at this time to make that objection that has heretofore been stated by counsel Rawlings.

Exam. WATERS: That objection will be overruled.

Mr. RAWLINGS: May it be understood that we have a running objection to this testimony without having to renew it at each question?

Exam. WATERS: Yes.

Mr. BROOKS: And all parties have the benefit of objections made by other parties?

Exam. WATERS: Yes, sir.

T. E. HUFFMAN, having been previously sworn, resumed the stand and testified as follows:

Examination by Examiner:

582 Q. (By Exam. WATERS) Mr. Huffman, will you describe briefly the operating rights of the T. & P. Motor Transport Company at the present time?

A. T. & P. Motor Transport Company's operating rights are from Shreveport to Gladewater, and from Wills Point to Big Spring, Texas. That is where they are operating at the present time.

Q. Do you have operating rights into Louisiana?

A. Only for handling the T. & P. Railroad freight.

Q. Do you have two types of operation now? That is, you mentioned that the T. & P. Motor Transport rights are between Gladewater and Shreveport, and Wills Point and Big Spring.

Mr. BROOKS: Mr. Examiner, we interpose the objection that the certificates are the best evidence of what operating rights they have, sir.

Exam. WATERS: I understand that, but we are trying to find out what physical operations are being conducted, and how they are being conducted.

A. May I answer this way, that the information furnished in the hearing in Dallas of February 11, 1942, is exactly as it was then, with the exception that the T. & P. Motor Transport is handling freight for account of the T. & P. Railroad.

Q. (By Exam. WATERS) What pages of that record—

A. I am talking about the total, the whole is involved.

Q. Do you know what pages of the record—

A. No, I don't.

Q. —that was explained on?

583 A. That was outlined, I am sure, in this whole proceedings.

Q. Let's take up the matter of the substituted motor for rail service, in which the T. & P. Motor Transport handles the railway freight. Between what points is that handled?

A. Between New Orleans, Louisiana,—I may overlook some particular point, but it is a matter of tariff records. Between New Orleans and the state line of Texas, Wascam, or near there. Between Wills Point and Gladewater. Between Big Spring and Hobbs, New Mexico, and Pecos. At those particular points, we handle freight for account of the T. & P. Railroad, and it interchanges freight,—the T. & P. Railroad interchanges freight with other common

carrier motor carriers, parties to the common carrier tariffs, insofar as we have been able to get out of the bureaus, or get into the bureaus. It takes some little time to do that, and we are trying to accomplish it as fast as we can. We are wholly in some of the tariffs, in some of the bureaus, and trying to work out details for the others. That is under the special permission of the Interstate Commerce Commission, M-43103, number 21008.

Q. What is the date of that?

A. 5-18-44, as amended.

Q. Well, are there any gaps in your motor for rail operations along the main line of the T. & P. Railroad?

A. The T. & P. Motor Transport operates as a common carrier motor carrier—

584 Q. I mean this substituted motor for rail service.

A. Yes. Wills Point to Gladewater.

Q. There is a gap between Wills Point and Gladewater?

A. That's right.

Q. Where you have no authority?

A. Well, we have authority to handle freight for account of the T. & P. Railroad only. At least, that is what we are doing. If you take my judgment on that, we have authority to do otherwise, but that is what we are doing now.

Q. But do you operate between the Texas-Oklahoma state line at Wascom, and Gladewater? Does the T. & P. Motor Transport operate between those points?

A. Wascom and where, Gladewater?

Q. Yes.

A. You are talking about state tonnage, or interstate?

Q. Interstate. All of these questions have to do with interstate.

A. That would be state tonnage between Wascom and Gladewater.

Q. It would be traffic from outside the state.

A. Yes, that is from Shreveport to Gladewater.

Q. Do you operate over the highway between those points?

A. We do, as a common carrier.

Q. Handling freight for the railroad?

A. No, handling freight for the railroad or in our own name, in the name of the T. & P. Motor Transport.

585 Q. Let's talk about what you do for the railroad first. Between what points do you operate for the railroad, starting at New Orleans, along the main line?

A. Well, New Orleans,—the main line and the branch lines are the same operations.

Q. Yes.

A. We start at New Orleans, and operate up to the Texas state line for account of the T. & P. Railroad.

Q. Then where do you go in Texas?

A. From Wills Point to Gladewater; from Big Spring to Pecos, and from—up to Hobbs, New Mexico.

Q. Does that leave a gap between Gladewater and the Texas-Louisiana state line?

A. What kind of a gap?

Q. Well, you mentioned operating from New Orleans to the Texas-Louisiana state line, and then the next point you mentioned was Gladewater to Wills Point.

A. Yes. We operate as a common carrier in that section, handling freight for anybody that offers it to us on the trucks; we also handle freight for account of the T. & P. Railroad, on a divisional basis.

Q. That is between Gladewater—

A. And Wills Point—I mean Gladewater and Shreveport.

Q. You perform substituted motor for rail service for the T. & P. Railway between New Orleans on the
586 east, and Pecos on the west?

A. Will you say that again?

Exam. WATERS: Will you read it?

(Thereupon the question referred to was read by the reporter.)

A. Yes, I would say that is correct, sir, under divisional arrangements.

Q. (By Exam. WATERS) And on into Hobbs, New Mexico?

A. That is correct, sir.

Q. Do you perform that same service over these branch lines in Louisiana, say between Alexandria and New Orleans?

A. Yes, we do.

Q. Over this line from Cypress up to Shreveport?

A. We do. That is part of the operation.

Q. And through Natitoches, that other line?

A. Yes, we operate in all points in Louisiana now operated by the T. & P. Railroad. In many cases we do not parallel the T. & P. Railroad.

Q. But you operate over the nearest highways?

A. That is right.

Q. As authorized by the certificates?

A. That is correct. We have a certificate for that purpose.

Q. And do you operate from Shreveport to Texarkana, up along the highway?

A. We do not.

587 Q. By the railway?

A. We do not.

Q. How about the line from Texarkana to Marshall? Is that a T. & P. line?

A. It is. I overlooked that. We operate for the railroad in that particular operation, from Marshall to Texarkana, too.

Q. That is through Bivens?

A. Yes, Atlanta and Jefferson.

Q. And then how about this northern line, through Sherman to Fort Worth?

A. We do operate in that section.

Q. Do you serve Denison?

A. No, we do not.

Q. Mineral Wells?

A. Yes, we do.

Q. Do you operate along this line from Abilene to Ballinger?

A. We do not.

Q. Or Pecos to Toyahvale?

A. We do.

Q. And you serve Wink, Texas?

A. We do.

Q. Now, in that operation, what rates are used?

A. Now, will you make it more specific, as to what territory, and so forth?

Q. Well, do shipments handled in that operation
588 move under rail rates or the motor rates,—that is the rates in the rail tariffs, or the rates in the motor tariffs?

A. That entirely depends upon the point of origin or the shipper's desire—not the point of origin, but the shipper's desire. If a shipment is interchanged to the T. & P. Railway by a truck line, or a shipment originates on a T. & P. Railroad, destined to a truck line destination, the truck rates will govern. If the shipper selects—no, he don't have to select it. The truck rates will govern, which, in practically all cases is six per cent higher or more than the rail rates, especially on the four classes of commodities.

Q. That is six cents a hundred pounds?

A. Six per cent higher.

Q. Does the T. & P. Motor Transport have any individual agents at any points?

A. No, sir, they are all joint agents with the T. & P. Railroad.

Q. Now, when a shipper takes a shipment to the railway station, what determines whether it will move under the motor rates or the rail rates?

A. He must specify. The tariff so provides.

Q. And is his request honored?

A. In every case. If we didn't, he would have a recourse in the matter of a claim.

Q. Suppose he didn't specify?

589 A. He must specify. If he doesn't, it will go rail.

Q. Is he always asked what service he wants?

A. That is the instructions, and we follow it up to see that it is done from time to time. Of course you are depending on the human element interest in that, but it doesn't happen very often. If he does do such a thing, the agent, it comes to my attention, and we have been so working now since May, and I haven't had a case called to my attention of any violations.

Q. You say if he doesn't specify, then the agent bills it by rail?

A. He would have to, of necessity, because of the lower rate, which would govern.

Q. You would give the shipper the benefit of the lower rate?

A. Yes, sir, and the benefit of slower service in most every case.

Q. Well, what is the physical operation of these trucks now? When the truck leaves New Orleans, where does that truck run to?

A. Addis.

Q. Is the highway operation set up in divisions, like certain truck runs?

A. Yes, sir.

Q. What are those runs? New Orleans to Addis, one division or run?

A. Yes.

590 Q. What is the next one?

A. Addis to Alexandria.

Q. And the next one?

A. Shreveport.

Q. What is the next one?

A. Dallas.

Q. And beyond Dallas?

A. Abilene.

Q. Then what is beyond that?

A. Pecos, and up to Hobbs, New Mexico.

Q. Where does the Pecos—I mean the Hobbs truck operate from?

A. Big Spring.

Q. That operates between Big Spring and points on the Hobbs branch?

A. Well, it might operate up the T. & P. main line to Monahans, and up the branch, or might go up by direct line through Lamesa, Texas.

Q. Is that the cut-off?

A. Have you got a map? Yes. That depends on the load you have, and the destination of it. If you have got a full load for Hobbs, and—well, if you haven't got a full load for Hobbs, and have tonnage for Monahans, then if the two together make a load, it would be cheaper and more economical to run it to Monahans than it would to go
591 by Lamesa, but if you do, you have got to keep the ten per cent circuity under O. D. T. in mind, and we observe that, sir.

Q. Now, at what points do you get shipments from the railroad? That is, at what points does the truck get shipments from the railroad?

A. At every point.

Q. Do you have any through trucks, carrying through freight?

A. Now, it depends on what you call through trucks and through freight. You would have to designate the points. I couldn't tell you.

Q. Well, say between New Orleans and Alexandria.

A. We do, yes.

Mr. Rawlings: What was that destination point? I didn't catch it.

A. He said between New Orleans and Alexandria.

Q. (By Exam. Waters) Then how about between Alexandria and Shreveport?

A. Yes, sir.

Mr. Morgan: Mr. Examiner, we can't hear the questions back here.

Q. (By Exam. Waters) I will try to speak louder. Between Shreveport and Dallas?

A. Yes, sir, we do.

Q. Dallas and Fort Worth?

A. Yes, sir, we do.

592 Q. Fort Worth and Abilene?

A. Yes, sir, we do, or Dallas and Abilene.

Q. Not Fort Worth-Abilene?

A. Both points. May I disgress from the answer to tell you that Dallas and Fort Worth are thirty-two miles from each other, and the two together have from 750

to 800,000 population. They are both large distributing centers, and we try to give Fort Worth the same service to East Texas as we do Dallas to West Texas, and therefore it is a shuttle service, you might say, from Dallas to Fort Worth, or between Dallas and Fort Worth. I wanted to give you that so you will be acquainted with it. There is almost hourly service between Dallas and Fort Worth in normal times.

Q. You load a truck at Dallas and then unload it at Fort Worth?

A. Yes, sir.

Q. And vice versa?

A. Yes, sir, and we run them through both places.

Q. To points on either side?

A. That's right.

Q. Of course, do you have any through runs scheduled, or does this vary according to the tonnage conditions from time to time?

A. Well, I wouldn't answer the through run schedule on that kind of a question. If you will make it specific, I will answer it.

593 Q. Do you have any scheduled truck operations, that is?

A. Yes, sir, they are all scheduled.

Q. How do those schedules tie in with the rail schedules? Do they tie in?

A. As a rule, they depart after the train goes. I want to make this very clear to you: We don't put anything on the trucks that we can put in box cars, and give anywhere near the service. We put everything we can in box cars and move it as such. I would say only about twenty per cent of the interstate tonnage, or the tonnage, I will say, both state and interstate, is moved by trucks, and seventy-five or eighty per cent of it therefore is moved in box cars, and this tonnage, this small amount of tonnage, is to supplement that service, usually using the tonnage that comes in after the departure of the trains.

Q. Between what points do the box cars operate?

A. Well,—

Q. The merchandise cars, that is?

A. That varies generally, depending on the tonnage.

Q. Well, you have some schedule, regular box car schedule, don't you?

A. Yes, we do. I want to further state that this is abnormal times, and you cannot count the situation now as of a normal time.

Q. Well, what are the regularly assigned merchandise car schedules?

594 A. At the present time?

Q. Yes.

A. We operate cars between Dallas and Fort Worth, several of them a day, on freight received up to the time of closing. We operate several cars a day—I mean we operate cars daily into Abilene.

Q. From where?

A. Dallas and Fort Worth, and from St. Louis. We operate cars daily—I believe you asked me to give you where we load cars?

Q. Yes.

A. We load cars daily at Dallas and Fort Worth to Sweetwater; we load cars daily for Abilene—at Dallas and Fort Worth for Big Spring, Texas; we load cars to El Paso daily,—

Q. That is from Dallas and Forth Worth?

A. From Fort Worth and Dallas. We operate cars from Dallas and Fort Worth to Longview and east Texas. That is to Longview. We operate cars from Dallas to Mineola—I mean from Dallas to Marshall, and Dallas to Shreveport, and Dallas to Texarkana, and Fort Worth to Texarkana.

Q. Those cars going to Texarkana, which line do they move over?

A. The main line, via Longview and Marshall.

Q. Do you run any over that line through Paris?

A. We do not, normally. We might in case of an accident, or something like that.

595 Q. Now, what are the regularly assigned merchandise car schedules in Louisiana?

A. We have cars loaded at New Orleans to Addis; baggage cars loaded at New Orleans for Shreveport and Alexandria; a car loaded at Shreveport to Addis, Louisiana, and from Addis into New Orleans. Now, all of this is brought about, these numbers of cars in certain conditions is brought about due to orders of the O. D. T. and probably an increase in business. We do not operate those cars under normal conditions and times. There is not sufficient tonnage, but we do operate some of those cars under normal times.

Q. Do you operate any between New Orleans and Shreveport?

A. We do, baggage cars, on a passenger train.

Q. Do you operate any merchandise cars on freight trains?

A. No, sir. I say "not any". There may be an occasional car, overflow, or something.

Q. Isn't there considerable tonnage between New Orleans and Shreveport?

A. At times.

Q. Is that moved on the trucks?

A. It is not.

Q. How is that moved?

A. Box car or baggage car, as I explained just now.

Q. Are baggage cars able to accomodate that traffic?

A. Well, you can put 50,000 pounds in a normal baggage car.

596 Q. Why do you use baggage cars between those two points?

A. Because it is faster service.

Q. Then why don't you use them between other points?

A. Because we have freight service to correspond with any competitive condition.

Q. Do you have unusual competition between New Orleans and Shreveport?

A. Yes, siree, just plenty of it.

Q. And that is the reason for giving this extra fast service, is it?

A. No. We have competition between every point. There is no such thing as a local point. Take the first station out here, Grand Prairie. There is something like thirty truck lines serving that point. It is a local point on the T. & P. Railroad, but not on truck lines. We do that because the distance between New Orleans and Shreveport is 325 miles, and the operation of the freight trains is such that we cannot give the service or make the schedule that we desire to give the public.

Q. You mean the freight train?

A. I mean the freight train. That is what I mean. Therefore, we put that tonnage in baggage cars, and put them on a passenger train leaving New Orleans at ten o'clock at night, or thereabouts, and arriving in Shreveport at seven.

Q. Does that train just handle tonnage for Shreveport proper?

A. Alexandria too.

597 Q. Or points beyond?

A. Alexandria.

Q. How about points beyond Shreveport?

A. It does.

Q. What happens to that tonnage when it gets to Shreveport?

A. We put it in a car or a truck, depending on where it is destined to. Generally it is local tonnage, and we put it in a truck, to carry it to destination, generally in close proximity to Shreveport. There is sometimes, when that tonnage comes over into Texas,—well, I have had tonnage from New Orleans going to Amarillo, Texas, leaving New Orleans late at night, at ten o'clock, and that will be in Alexandria early in the morning, and due to the truck connections in Dallas, it will be in Amarilla by four o'clock the next afternoon. That is something about a thousand miles across there.

Q. That would be interchanged with an independent truck line?

A. It would, at Dallas. We truck it from Shreveport to Dallas, and give it to a truck line from here to Amarillo, or any other destination. I have one in mind, a certain shipment, to Amarillo.

Q. Do you have any rail points that you would call break-bulk points, that are set up for that purpose, for interchange with the trucks?

A. Yes. We have interchange points at various places.
They are named in the tariff. They are not exactly
598 break-bulk points for the T. & P. Railroad, but
it is where the truck lines branch off from the T. & P. north and south, and maybe parallel them, as far as I know.

Q. What are the points where the T. & P. interchanges with the T. & P. Motor Transport?

A. At every point.

Q. In large volume, I mean.

A. Oh, I see. Dallas, Fort Worth, Addis, Big Spring—I think that would be the largest percentage.

Q. How about Alexandria?

A. Not—there is some there, but not to the extent as the towns I have named.

Q. How about Shreveport?

A. Some, but not to the extent of those I have named, because the T. & P. Motor Transport issues its own bills of lading and operates out of Shreveport, and there is no necessity for handling rail tonnage by truck, except for nearby points. There is some.

Q. We have been talking now about what the Motor Transport does for the railway. Now, what does the Motor Transport do for itself, as a common carrier for the general public?

A. It operates as a common carrier for the general public.

Q. Between what points?

A. Between Shreveport and Gladewater, Texas, and Wills Point and Big Spring, Texas.

599 Q. And those were the rights that were acquired by purchase?

A. They were.

Q. And you feel that under that purchase, you have that right?

A. Anything less than what we got, or any restriction would be less than what we paid for, and we think it would be an unjust and unfair condition. We have been operating—I want to make this clear: We have been operating trucks, the T. & P. Motor Transport has, since 1935, in September, and since the inception of the operation we have been issuing our own bills of lading, having our own accounting system, moving our own freight in our own trucks, in many cases substituting rail for the truck service, and the Commission is fully aware of that condition, as I testified before Division 5 in the Arco case to that extent several years ago.

Q. Where was that operation started in 1935?

A. Started from Monahans, Texas, to Hobbs, New Mexico.

Q. That authority was granted under the original docket number?

A. Yes, sir, 50544.

Q. Now, do you operate between those points for the general public?

A. We did, in every case, and we thought we had a right to do that all along, and I feel like we do now, but we acceded to the Commission's—under protest, we acceded to the Commission's ruling on Auxiliary 2 in Supplement R.

Q. When did you discontinue that type of service?

600 A. Yes, sir. We discontinued that on May 18 1944.

Q. Now, this service that you operate for the general public, that is between Shreveport and Gladewater, —

A. That's right.

Q. —and then Big Spring and—I mean Wills Point and Big Spring,—

A. That's right.

Q. —that leaves a little gap, doesn't it, between Gladewater and Wills Point?

A. It does, I am sorry to say.

Q. Well, how do you bridge that gap?

A. We turn it over to the railroad.

Q. Say you had a shipment from Shreveport going to Dallas, how would that be handled?

A. Most generally by rail.

Q. Well, say to this point Forney, just beyond Dallas?

A. It could be handled by the T. & P. Railroad and T. & P. Motor Transport, sir, so routed, and the divisional arrangement is in effect.

Q. It could move by rail or—

A. Part rail and part motor.

Q. —part rail and part motor?

A. That's right.

Q. Now, how do you serve Masquite and Forney, Texas? Those were two points that were authorized in the sub 9 application.

601 A. We serve them in trucks.

Q. Is that served in your common carrier service?

A. The railroad uses the T. & P. Motor Transport substitute service to those two towns.

Q. You don't serve them as a common carrier for the general public?

A. We do not.

Q. Those two points were off the routes that you purchased?

A. No, they were not. I would say it wasn't purchased: the line didn't serve them, but they are right on the line, and we passed through them.

Q. But your predecessor didn't serve them?

A. Didn't serve them, no. They are just small, little communities, and when we took over the operation, we felt like we ought to give those people some service, and therefore we made an effort to get a certificate to do so.

Q. You have no operations, motor operations, west of Pecos at this time?

A. Yes, we have it for account of the T. & P. Railroad, but we never have perfected our operation, due to the sub 11 being before the Commission, expecting a ruling. We appealed from the Commission's order, and they have never ruled on what our final hearing is.

Q. Have you started those operations?

A. Only for account of the T. & P. Railroad, but
602 due to the restrictions placed in them by the Commission, they are worthless. You might as well take them back.

Q. Are you operating them at present?

A. No, sir, we are not.

Q. Did you operate them for a while?

A. No, sir. They are worthless to us. We operate the state tonnage in there.

Q. Well, do you handle any interstate freight across there?

A. For account of the T. & P. Railway only, from El Paso to those territories in there, up to, but not including, Pecos, and from Big Spring West, for account of the railroad.

Q. Under what operating authority do you do that?

A. The original sub 11 and tariff authority publication.

Q. And sub 11 has not been finally decided?

A. I appreciate that, but we published the rates for handling shipments for account of the T. & P. Railroad, and it is tariff authority, not as a general common carrier, but for account of the T. & P. Railroad.

Q. But there is no operating authority outstanding to cover that?

A. No, sir, only the tariff authority. We made application and it was granted.

Q. Do you know that the tariff authority is not the main authority?

A. I appreciate that, that that is not the main au-
603 thority, but as long as it was granted, we felt like it was our right to operate there, and serve those little towns. There isn't much of it; probably about a thousand pounds a week, and you can't give those people any service in there. That is primarily a cattle country, and you will go a hundred miles and there won't be over three or four thousand people that live in that whole territory. They had no service at all, so where we are serving them, we are serving them only for the account of the T. & P. Railroad only.

Q. That is under the substitution rules?

A. That is right.

Q. In Agent Kipp's tariff?

A. That is right. You don't have to have—I think you can almost handle them without authority from the Commission, under general authority.

Q. I think that has been discussed by the Commission, I believe in the Substituted Freight Service case.

A. That's right.

Q. Now, what is the extent of your intrastate authority?

A. We operate—we have got 3,000 miles. We have been very fortunately situated, our operation has, in that we have a Louisiana operation, in the state of Louisiana, of 1121 miles, wholly intrastate; and we are fortunate in Texas in traveling 1882 miles, intrastate, and those certificates are unrestricted. There is no similar operation or
604 situation that I know of in the United States, and seventy-five per cent of our tonnage is intrastate tonnage.

Q. Now, in Louisiana, between what points is your intrastate authority?

A. Intrastate?

Q. Yes.

A. All points served by the T. & P. Railroad, the same as the interstate, New Orleans to Shreveport, including the branch lines.

Q. And you have no restrictions?

A. Yes, sir, that's right.

Q. How about this line from Shreveport to Texarkana?

A. No, sir, we don't operate that line at all; no truck operation at all.

Q. In Texas?

A. From Texarkana through by way of Dallas.

Q. That is through Marshall?

A. Through Marshall, and Dallas, Longview—let me go back. From Texarkana to El Paso, via Longview, Marshall, Dallas, and Abilene, through to El Paso, and from Texarkana to Fort Worth via Paris. We also serve the Mineral Wells Northwestern Railroad, or Mineral Wells, I will say. We also serve the T. & N. M. points; also the Pecos Valley Southern points. Those are subsidiaries of the T. & P. Railroad, those rail lines are, and we serve those
605 unrestricted on rail tonnage. Seventy-five per cent of our tonnage that we handle is state tonnage, intrastate, Texas tonnage in Texas, and the same percentage will be in Louisiana.

Q. Do you have any intrastate authority over this line from Texarkana to Fort Worth through Paris?

A. I just mentioned that, yes, sir, Texarkana to Paris—I mean to Fort Worth via Paris.

Q. How about Denison, Texas?

A. No, sir, we do not.

Q. How about in New Mexico?

A. We have no intrastate rights in New Mexico. All of that tonnage in New Mexico is interstate, and practically no tonnage moving between points on our line in New Mexico. We have never applied for authority.

Q. How about this line from Abilene to Ballinger?

A. We don't operate that. By trucks, that is. That is what I have reference to.

Q. Yes.

A. May I make a statement here?

Q. Yes.

A. The Railroad Commission of Texas, and the Louisiana Public Service Commission, are well acquainted with the needs of the public. They keep in close touch with the general situation. They know the territory in which we serve: they know the commodities we have generally. For
606 example, we operate through probably approximately twenty-five oil field towns. That tonnage and population fluctuates to where some days you will have, or some years, I should say, you will have—say Wink, Texas, or Hobbs, for instance,—it is in the record,—something like four million pounds a year, and the next year it will be twelve million. In some cases it will fluctuate even more than that. It fluctuates according to the general situation. Now, the State Commissions, after having a series of hearings, the two State Commissions understood the situation and granted a certificate without any restrictions, so that we could serve the public, in connection with other common carriers, as a common carrier, and we so operate.

Q. Well, coming back to the interstate operations. Do you have any truck schedules that are coordinated with rail schedules?

A. We do.

Q. As an original matter?

A. We do.

Q. What are those schedules?

A. Addis, Louisiana—you mean the towns?

Q. Yes.

A. Addis, Louisiana, and Big Spring, Texas. That is as at present. We have some at Shreveport. We have some at Abilene.

Q. Those are the principal points where you interchange a volume of freight between trucks and rail?

607 A. Well, the volume is at Addis and Big Spring.

Q. Would you take a shipment at New Orleans, and put it on a truck and haul it through to Pecos?

A. No, sir.

Q. Or to New Mexico?

A. We have been operating a number of years, and we never have yet. We don't see any reason for it.

Q. What is the longest haul you would give a truck shipment?

A. About 350 miles, sir.

Q. Between what points?

A. At the present time, Big Spring and El Paso.

Q. Taking points east of Pecos, what would be the longest haul?

A. I would say normally 200 to 225 miles.

Q. Between what points?

A. Well, between Dallas and Big Spring—I mean Dallas and Abilene, and from Dallas to Shreveport.

Q. You operate trucks then between Dallas and Shreveport?

A. Yes, sir, and between Dallas and Abilene both, and in addition we are operating box cars.

Q. You also operate box cars?

A. Absolutely. Only eighty per cent of the tonnage moved in the trucks. The only move—we only move about twenty per cent of our tonnage out of Dallas and Fort Worth—I would say less than twenty per cent—in
608 trucks, and I would also say that of the tonnage moved in trucks, not less than, or not greater than forty or forty-five per cent is interstate tonnage, and we are required by the State Commission to make these operations over these certificated routes, and give daily service.

Q. Under what circumstances do you use the trucks instead of the box cars?

A. On tonnage received after the departure of the train, and to points where we can give better service by use of trucks, the smaller points.

Q. Then it depends on the size of the load and amount of tonnage?

A. I think that would govern a whole lot, and it would depend on your train service. This merchandise is moved on fast trains, from point of origin, Dallas and Fort Worth, and you can't stop the train at every little station to unload a few hundred pounds of freight, and make your schedule to destination. The merchandise business is set up in overnight service in this section, and they are mostly small merchants, carrying small stocks, and any service,

or any time you can't give them overnight service, it is very unsatisfactory, and you can't get the business, and they generally purchase their commodities at points where they can get overnight service. Each delivery point, or each distributing point, has its own trade territory.

609 Q. Does the railway have a fast freight train out of Dallas going west to El Paso?

A. Well, no, it doesn't. It can't get to El Paso. It does fairly good up to Big Spring, Texas, under normal times, but at the present it is not fast. You have got to yield the right of way to government freight, and soldier trains, and so forth.

Q. At what points does that train stop?

A. Abilene, Sweetwater, Big Spring, and Baird, I believe. I think it stops at Baird and changes crews there.

Q. And beyond Big Spring you depend on the trucks mainly?

A. Yes, sir. There is no territory large enough to consume a quantity of tonnage such as you are required to operate in box cars.

Q. That is because the traffic is light?

A. Yes. That fluctuates too. That is oil field country out there.

Q. Now, out of New Orleans, do you run a fast train out of New Orleans?

A. Well, it is up as far as Addis, fairly fast.

Q. Is that the first stop out of New Orleans?

A. Yes.

Q. Where does it run beyond that?

A. Well, that is the division point. It comes on through —it is a through train on west, and handles

610 perishables and other commodities through to— I think that is a through train to El Paso.

Q. Does it drop off box cars at any intermediate points?

A. No—well, it probably does have some box cars, other than merchandise, for Alexandria and Shreveport, and comes on up and probably sets out cars, depending on the nature of the commodity where they would set out at other than regular terminal points, such as Dallas and Fort Worth.

Q. Then Dallas and Fort Worth would be terminal points?

A. Yes, it would be a terminal point for unloading the merchandise. Fort Worth would be the division point for the train crews, and Mineola would also be a division point,

and they would probably do some switching and swapping around of cars there, but they wouldn't set out anything.

Q. Do you operate similar trains going east, in the other direction?

A. No. They are regular scheduled trains, sent out to handle perishable freight and high class commodities, but they are scheduled to handle merchandise to certain points.

Q. Where do they pick up box cars?

A. They pick up box cars at Dallas and Fort Worth.

Q. At what other points east of that?

A. We set them out at Mineola—you mean pick up or set out?

Q. Pick them up going to New Orleans.

A. I wouldn't know, other than merchandise.

611 Q. I mean merchandise cars.

A. They wouldn't pick up any.

Q. They go right through from Fort Worth and Dallas?

A. Yes. They do a lot of switching, and other work, but they wouldn't pick up any merchandise.

Q. You pick up carload freight?

A. They do, yes. However, you must bear in mind that other than Dallas and Fort Worth, and New Orleans and Shreveport, the rest of the territory is a consuming territory. There may be some—well, practically all of the towns have something to ship at this time, some kind of government jobs going on there, but in normal times, we serve a consuming territory.

Q. When these cars come back into these points, going west with merchandise freight, how are they loaded back east, those particular cars?

A. In the majority of cases, they come back empty.

Q. There isn't any merchandise freight moving out of the smaller points?

A. No, sir, there isn't. You said "any". I want to qualify that.

Q. I mean enough to balance it.

A. No, there isn't, no, sir. You might accumulate enough at some station from various surrounding stations in the course of a day or two to load an occasional car, but

612 it is not normally; it is not regular or dependable, and if you don't give the public service—I claim to know something about handling merchandise, and what the public wants. That is my business. If you don't give the public good service on merchandise, you won't have anything at all left. I am talking about the railroads

or any truck line either. That is the thing which determines schedules for both railroads and truck operators, and we try to give about the same service, or at least we try to give satisfactory service. We don't give any better service than a truck line, but we give equally as good service by the coordinated truck service.

Q. When a merchandise car gets to Abilene and is unloaded, how does it move back out?

A. It may stay there several days awaiting a load, or may load with some other commodity, or drift back in the course of the regular handling, for further loads in some other direction, or it may be loaded locally with cotton seed, or some other local commodity, to some surrounding point down there.

Q. That is carload freight?

A. Yes. There is no merchandise.

Q. There is no merchandise?

A. It doesn't come back with merchandise.

Q. Now, as I understand the position of the T. & P. Motor Transport, it is that they just want to keep on operating as they are now?

613 A. Yes, sir, by all means.

Q. And the conditions that are in the present certificates are satisfactory?

A. Well,—

Q. Well, they seek no change in them?

A. We seek no change in them at this time.

Q. They are not satisfactory in all respects?

A. No, sir, they are not satisfactory in all respects.

Q. But you are not prepared to seek any change in them at this time?

A. No, sir. I am not asking any change in any manner, shape or form at this time. They have handicapped us in many ways, but we have been able, in a method of our own, to try to overcome them, and we have got our set-up made to that extent, and we don't violate the operating rights. We interchange freely with the other common carrier motor carriers, both state and interstate, and have for a number of years, and there is several million pounds of freight involved. We serve territory not served by any other common carrier.

Q. Now, do you interchange freight with other motor carriers at points where the T. & P. Motor Transport does not serve the general public?

A. We do.

Q. Is that done under the railway operating, or I should say under the rail road billing?

614 A. Yes, sir.

Q. And not under the motor carrier billing?

A. No, sir.

Q. That is done under the rail-motor rates?

A. Yes, sir.

Q. That were authorized by the special commission?

A. That is right, sir.

Q. It is between the points where you serve the general public, and you also interchange with independent motor carriers under the all-motor carrier tariffs?

A. Yes, sir.

Q. That is Agent Hughett's tariff?

A. Yes, sir, and I would like to make this observation to you and the Commission: While we have complied with the Commission's order to permit the T. & P. Railroad to become a party to the truck tariffs, it is rather expensive, and they have put limitations on us that are restrictive, so that we can't operate in many cases. You have got to file fourth section applications before you can clear through the Commission, and if you know what that is, you know what it takes to work out one. The Commission knows full well what it is, and in our case they have restricted us to 150 per cent of the circuitous route—I mean of the direct route. Now, you take it, they have extended this authority for two years, until October, 1945, provided we will

615 fully comply with the O. D. T. or Interstate Commerce Commission's circular 20.

Q. That is tariff circular 20?

A. Tariff circular 20, which means that at the end of 1945, if they don't release that restriction, we will have to publish our own tariffs to continue this operation as we are now doing by just a few lines in the tariffs, and it will cost us in the neighborhood of $50,000.00 a year to keep up the tariffs, and it will be prohibitive. We can't carry on. The result will be that we will all lose, including the public.

Exam. Waters: Are there any further questions of this witness?

Mr. Rawlings: I want to ask one question, to clarify the only interest that I have in this matter, which relates to the question of whether his operating rights are being modified in his present certificate.

Cross Examination.

Q. (By Mr. RAWLINGS) Mr. Huffman, you have a certificate from the Interstate Commerce Commission authorizing the operation from Texarkana to Fort Worth by way of Paris?

A. Yes, sir.

Q. And Sherman?

A. Yes, sir.

Q. Do you not?

A. Yes, sir.

Q. In that certificate, Texarkana and Dallas, I be-
616 lieve, are key points, aren't they?

A. No, sir.

Q. And Fort Worth?

A. No, sir.

Q. What are the key points?

A. In that certificate, it is Texarkana and Fort Worth.

Q. Texarkana and Fort Worth are the key points?

A. Yes, sir.

Q. Under that restriction, the transport company would not physically operate a truck from Texarkana to Fort Worth, transporting merchandise originating in Texarkana and destined to Fort Worth?

A. Or passing through Texarkana.

Q. Or passing through Texarkana.

A. Or passing through Fort Worth.

Q. So that you would not physically haul the freight all of the way over that line, would you?

A. Not by truck, no, sir.

Q. Now, is there anything in this tariff provision about interchanging with independent motor carriers or the substituted service for rail so that you can circumvent that restriction, and haul it all of the way through?

A. No, sir.

Q. In other words, I don't know about the tariffs, so I am asking you.

617 A. The operating rights, the restriction there has been changed in no manner, shape or form.

Q. In other words, whether you haul it for the transport company or the railroad company, you still couldn't handle the merchandise all of the way through by truck, could you?

A. No, sir.

Q. And you don't propose to lift, modify or remove any

of your operating rights in your present authority by this proceedings here?

A. We do not.

Q. And you don't propose to do that, nor have you done it, by any of your tariff provisions?

A. No, sir, we haven't.

Mr. RAWLINGS: That is all of the questions I have to ask, Mr. Examiner.

Examination by Examiner.

Q. (By Exam. WATERS) Do you handle that traffic between Texarkana and Fort Worth by train?

A. We do.

Q. Could you bring it around through Marshall?

A. The truck—yes; that is the way we bring it on the train. The truck can't move it at all in there.

Q. Couldn't the truck move it around through Marshall?

A. No, sir. You have got that Gladewater to Wills Point in there. If you could do that, you could substitute
618 the truck service. It could be billed by the railroad, and the railroad could substitute the service in there, but I don't think, as long as we have a key point on the T. C. division around by Paris, we considered it better the other way, and we wouldn't attempt to move it that way. I think physically you might do it.

Q. Could it be moved that way in substitution of the rail service?

A. By which way?

Q. That is through Marshall and Longview and Dallas, in substitution of rail service?

A. If routed in connection with the T. & P. Railroad and T. & P. Motor Transport, it is possible to do so, because the T. & P. Railroad has nothing to do with the Transport from Wills Point to Fort Worth. You have to move it—well, we have never moved a shipment that way, and do not anticipate doing so.

Q. You handle that traffic now by train from Texarkana to Fort Worth by way of Marshall and Dallas?

A. All of the way or part of the way. If there is not sufficient tonnage to move a car from Texarkana to Fort Worth, and there is sufficient tonnage to double up between Dallas and Fort Worth, we load that tonnage to whichever has the most tonnage, either Fort Worth or Dallas, and truck it between Fort Worth and Dallas.

Q. But you don't move it by highway around
619 through Sherman and Paris?

A. No, sir, we don't by Sherman and Paris. I think we are like all of the rest of the common carriers and railroads. We serve about forty government jobs, and I mean they are tremendous plants, such as North American out here, and the Consolidated at Fort Worth, serving, or using, something like 30,000 people each, and we have camps all up and down our railroad. I could name them if you are interested, and the tonnage, fifty per cent or more of the tonnage that we handle, is directly due to government efforts, or this war effort, and that applies to tonnage interchanged with the common carrier truck lines.

Q. How many motor vehicles does the T. & P. Motor Transport have?

A. We have got 306 pieces of equipment.

Q. Is that separate pieces?

A. Yes, sir.

Q. That is counting the tractor and trailer separate?

A. That's right.

Q. Most of your equipment is tractor and semi-trailer combinations?

A. Yes, sir, with the exception of our pick-up service, and that is small bob-tailed trucks.

Q. Well, do you have any evidence you want to submit, rail schedules or truck schedules,—

A. No, sir.

620 Q. —or anything of that kind?

A. No, sir. They vary according to the tonnage and the conditions.

Exam. WATERS: Are there any further questions of this witness?

Mr. REED: We have none.

Mr. MULHOLLAND: Mr. Examiner, before the witness is excused, I would like to ask for a short recess.

Exam. WATERS: We will take a short recess.

(Short recess.)

Exam. WATERS: Come to order please.

Are you ready to proceed?

Mr. REED: Yes, sir.

Exam. WATERS: Are there any further questions of this witness?

Mr. REED: We have no questions. I have a closing statement, Mr. Examiner.

The WITNESS: Am I excused?

Exam. WATERS: You can just sit there.

Mr. REED: I think, Mr. Examiner, I think it has been partly clarified as to whether or not the Commission itself, as under its own proceeding, is holding this hearing, but in order to be sure I would like to state it is my understanding that the Commission is not, on its own motion, conducting this hearing, but that it is conducting it
621 under the Commission's contention, which the Motor Transport Company does not agree with, that it is on the petition of the Motor Transport, and it is not a hearing conducted on the motion of the Commission. Is that correct?

Exam. WATERS: That is my understanding, that it is not the motion of the Commission. It is a continuation of the hearing of February 11, 1942.

Mr. REED: Of February 11, 1942.

Exam. WATERS: That originally was instituted on petition of the applicant.

Mr. REED: Mr. Examiner, then we desire at this time to preserve our objections, as heretofore made, to all of the evidence that has been presented, and in the alternative, and only in the event that the Commission desires to make any changes in our certificates as a result of this hearing,—if they do,—in that event, if they do desire to make any changes, then we at this time desire to have additional hearings for the purpose of introducing shipper witnesses, and at different places along the routes of these certificates. In addition thereto, we would like to preserve this request, that if the Commission makes any changes in our certificates, that we have advance notice or knowledge, or have knowledge of that, in order that we can properly conduct a hearing in connection with those changes that might be comtemplated, or might be made by the Commission.

We want the proper notice of those changes
622 being made, because we feel that before they could legally be made under this particular hearing, that we should have a notice that is more sufficient than the notice of this particular hearing, issued by Division 5 on the 30th day of August, 1944.

Exam. WATERS: Well, did you make any attempts, since this notice was issued, to find out what was the purpose of this hearing?

Mr. REED: No, sir.

Exam. WATERS: You relied on this notice?

Mr. REED: We didn't rely on the notice. We requested that the hearings not be held, and they denied us that request. We relied on the notice as far as it goes, but we didn't rely on it as to the production of evidence, or witnesses, or anything to that extent, because we didn't know exactly what the Commission wanted.

Exam. WATERS: Well, the denial of the petition was prior to the issuance of this notice.

Mr. REED: Yes, sir. This notice, I think, denies our petition. It denies our petition of August 5th.

Exam. WATERS: Then it is your position now that you simply at this time want to maintain the status quo of the operations?

Mr. REED: It is.

Mr. CURRIE: Mr. Examiner, may I make this statement?

Exam. WATERS: Yes, sir.

623 Mr. CURRIE: On behalf of the shipping interests of Dallas, which is the city, I think, probably the most vitally affected by this operation throughout the territory served by this applicant, and because the regulation is supposed to be in our interest, we think that if the Commission should determine to make any changes in this operation that we, as the persons most vitally affected, all are entitled to notice of just what is specifically proposed, so that we may at that time, and in advance of any hearing, determine what effect such specific proposal would have on our operations, so that we would then know how to go about deciding whether such specific contemplated change is needed, or is in the interest of the particular part of the public which we are.

Mr. BYARS: Our position is substantially the same as that of Mr. Currie. Fort Worth is very vitally interested and affected by any change that might be made in the operations of the T. & P. Railroad and the T. & P. Motor Transport Company, and we certainly had no idea what was in the mind of the Commission, so I was very glad to hear the Examiner say that the Commission had no preconceived notions or ideas as to what might be done. We are satisfied with the operation of these two carriers; we depend upon them very largely to get our freight to destinations, and we want them to remain as they are.

Exam. WATERS: You understand, of course, that I
624 am not authorized to speak for the Commission, but that is my view of what is involved here.

Mr. BYARS: Yes, sir.

Exam. WATERS: Any further remarks?

Mr. RAWLINGS: I think you understand our position, Mr. Examiner. As based on the previous statements made by me, we object to any enlargement of the operating rights of the T. & P. Motor Transport Company by the removal or modification of the present restrictions in its authority, and if that is contemplated as a result of these proceedings, we object to it on the status of the present record, and request that the Commission, if it has any contemplation of a removal of any of those restrictions, or a modification of them, that we be given ample notice and an opportunity to be heard on that issue. That is our position in that case.

Mr. MULHOLLAND: Mr. Examiner, I would like to state at this time that we have no objection to preserving the status quo. Of course that statement is being made without prejudice to our right to change that position in the event changes are contemplated or made by the Commission, or if at some subsequent hearing that issue should again be presented to the Commission.

Mr. MCBRIDE: Mr. Examiner, the reason the Regular Common Carriers Conference participated in this hearing today was because we feared there might be some
625 relaxation of the conditions which the Commission has heretofore incorporated in the certificates of the applicant. That was our sole interest in the case. We are opposed to any relaxation.

Mr. MORGAN: Mr. Examiner, I think Mr. Rawlings accurately stated our positions, and we occur, with this one further observation, that the notice that we received, we did not understand that to mean that there was to be any changes in the restrictions now imposed upon the applicant, and if, in the event changes are contemplated, we hope, like the others here, we will have adequate and sufficient notice, as provided by the rules of the Commission, before any such changes are made.

Mr. STEADHAM: The transportation brotherhoods concur in the statement made by Mr. Mulholland.

Exam. WATERS: Are there any further remarks?

Mr. REED: That is all.

Exam. WATERS: The witness is excused.

(Witness excused.)

Exam. WATERS: The hearing is closed.

(Thereupon, at 12:30 p. m., October 17, 1944, the hearing was closed.)

No. MC-50544[1]

The Texas and Pacific Motor Transport Company Common Carrier Application

Submitted..... Decided.....

1. Upon further hearing, in No. MC-50544 and certain sub-numbered proceedings, changes and modifications prescribed in the conditions contained in the 16 certificates heretofore issued The Texas and Pacific Motor Transport Company, to insure that the service rendered shall be limited to that which is auxiliary to, or supplemental of, rail service.
2. In No. MC-50544 (Sub-Nos. 21-TA, 24-TA, and 30-TA), found that it is unnecessary at this time to impose any further conditions or restrictions in the temporary authorities heretofore issued The Texas and Pacific Motor Transport Company.
3. Issuance of amended certificates, in conformity with the findings in this report, approved. Prior reports as shown in Appendix A.

Appearances as shown in prior reports. In addition:

Wilmer A. Hill and J. T. Suggs for applicant and the parent railroad.

Scott Daly for protestants in No. MC-50544 (Sub-No. 11).

Ed. P. Byars, Ralph W. Currie, Frank C. Brooks, Robert J. McBride, Cecil A. Morgan, Frank H. Rawlings, W. M. Conway, J. P. McCluskey, Joe T. Steadham, and W. H. Winchester for interveners.

Report Proposed by David Waters and Harold P. Boss, Examiners—July 5, 1946

The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., hereinafter called Transport, holds 3 grants of temporary authority and 16 certificates authorizing it to conduct certain operations, subject to the conditions hereinafter discussed, as a common carrier by motor vehicle of property in interstate or foreign commerce. This report deals with the conditions imposed in the authorities granted in these 19 proceedings.

[1] Other proceedings embraced in this report and citations to the prior reports are contained in Appendix A.

The title proceeding and eight of the sub-numbered proceedings herein[2] were the subject of a prior report, 41 M. C. C. 721. In that report the Commission, division 5, defined certain of the operating rights under certificates issued to Transport, authorizing the conduct of cer-
627 tain operations in interstate or foreign commerce, and admonished it to correct its practices within a reasonable time. Thereafter, Transport filed a petition for reconsideration and oral argument, for modification of the Commission's tariff regulations, or for further hearing, to which a reply was filed by an intervener, Railway Labor Executives' Association.

No. MC-50544 (Sub-No.11), which also is included herein, was the subject of a prior report, 33 M. C. C. 38, wherein the Commission, division 5, found that public convenience and necessity require operation by Transport as a common carrier by motor vehicle of general commodities, with exceptions, between Pecos and El Paso, Tex., through Sierra Blanca, Tex., serving all intermediate points which are stations on the rail line of The Texas and Pacific Railway Company, hereinafter called the Railway, subject to five conditions hereinafter discussed. The application was denied in all other respects. Pursuant to these findings an appropriate certificate was issued Transport on May 7, 1942. Thereafter, upon petition of Transport, by order entered December 7, 1942, this proceeding was reopened for further hearing solely to determine what modification, if any, should be made in the conditions set forth in the prior report, 33 M. C. C. 38, and what, if any, authority should be granted with respect to the transportation of freight between El Paso and Sierra Blanca for the Texas and New Orleans Railroad Company, hereinafter called the T&NO. Further hearing was held by a joint board and its recommended order, to which no exceptions were filed, was stayed the Commission.

Upon consideration of the first mentioned petition filed by Transport and of the records in all 19 of the instant proceedings, by orders entered February 14, and 21, 1944, these 19 proceedings were reopened for further hearing "solely to determine what, if any, changes or modifications should be made in the conditions" contained in the 16 certificates and 3 temporary authorities now held by Transport. Subsequently, on August 5, 1944, Transport filed a petition for cancelation of the further hearing and for permission to withdraw its application, No. MC-50544

[2] No. MC-50544 (Sub-Nos. 1, 2, 3, 4, 7, 9, 10, and 14).

(Sub-No. 11), from consideration at such further hearing. This petition was denied by order entered August 30, 1944. and the instant proceedings were referred to Examiner Waters for further hearing on the above-quoted subject. Such further hearing was held at Dallas on October 17, 1944. Transport, the Railway, and a number of interveners appeared. Since the hearing these proceedings have been referred to the examiners for the issuance of a proposed report.

At the further hearing, it developed that Transport now desires to continue its present operations without any change or modification of the conditions contained in its outstanding certificates. No opposition to the maintenance of the status quo of the present operations was expressed at the hearing by any of the interested parties. Transport, the Railway, and a number of the interveners at the hearing joined in a preliminary motion to dismiss the proceedings without the introduction of any evidence. The motion was overruled by the examiner, who suggested that evidence be introduced describing the present operations of Transport in order to bring the record up to date and to furnish a basis for discussion by the parties. The general freight agent of Transport, who is also the general merchandise traffic agent of the Railway, was made available as a witness and the examiner adduced certain facts as to the present operations. Counsel for an independent motor carrier also questioned the witness with respect to operation over one route.

628 Transport, a wholly-owned subsidiary of the Railway, holds certificates[3] authorizing it to operate, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, with exceptions, over an extensive system of regular routes, generally paralleling the Railway's lines, from New Orleans, La., on the east, to El Paso, on the west, a distance of approximately 1150 miles. These certificates are subject to the conditions[4] hereinafter discussed. Transport now renders (1) a motor service substituted for the less-than-carload train service of the Railway, and of certain other rail lines, and (2)

[3] The three temporary authorities included herein are discussed later in this report.

[4] That portion of the certificate in No. MC-50544 (Sub-No. 12) authorizing service at the Lone Star Shell Loading Plant and the Red River Ordnance Depot located approximately 16 and 20 miles, respectively, west of Texarkana, Tex.-Ark., is not subject to any conditions. Accordingly, the Commission should find that this portion of that certificate is not here in issue.

between certain points, a service wherein it transports traffic for the general public directly and in its own name. The former will be hereinafter called the substituted service and the latter the public service. Transport also has intrastate authority in Louisiana and Texas over routes paralleling all of the Railway's lines in these States. This intrastate authority is not subject to any conditions or restrictions. Approximately 75 percent of Transport's tonnage in these two States moves in intrastate commerce. In New Mexico, Transport only has interstate authority extending over 75 miles of routes generally paralleling a branch line. In Arkansas it has no authority to serve any point, except Texarkana, in interstate or foreign commerce.

Substituted service is performed by Transport for the Railway at practically every point on the rail lines from New Orleans to El Paso. However, at points on two segments, (1) between Shreveport, La., and Gladewater, Tex., and (2) between Wills Point and Big Spring, Tex., Transport also renders public service in the same manner as any independent motor common carrier, that is, on motor billing and under all-motor local and joint rates.

As stated, these proceedings were reopened for further hearing "solely to determine what, if any, changes or modifications should be made in the conditions" contained in Transport's outstanding certificates. A summary of the present conditions applicable at the authorized points on the system in geographical order is shown in Appendix B, and an explanation of these conditions is shown in Appendix C. Appendix D is a summary of the conditions in each certificate. Conditions 1, 2, and 4 have one form of wording each. Condition 3 has three forms, and condition 5 has two forms.

In general each certificate contains at least two but not more than five conditions, but there is now no uniformity in the conditions imposed in the various certificates held by Transport. Uniformity was not observed in the proceedings authorizing the issuance of the outstanding certificates because each proceeding covered a separate route, was heard separately, and the several proceedings were decided over a period of years. Moreover, it is apparent that when the issuance of the various certificates was
629 authorized, it was not deemed necessary at that time to impose all the conditions in each certificate. Now, however, question has arisen as to the exact operations which Transport may conduct. The primary purpose of these proceedings is to remove any uncertainty

with respect to the operations which Transport may hereafter perform. Accordingly, the conditions imposed in the 16 certificates which Transport now holds will be reexamined to determine what, if any, changes or modifications should be made in such conditions.

Conditions 1 and 5.—These two conditions will be discussed together. Condition 1 specifically limits the character of service which may be performed to that which is auxiliary to, or supplemental of, rail service of the Railway or of certain other named rail lines. All of Transport's certificates except five, namely, No. MC-50544 (Sub-Nos. 5, 6, 7, 8, and 22), contain this condition. And it is under these five certificates that Transport is now rendering public service at the points previously described. However, these five certificates, as well as all the other certificates held by Transport, contain a condition 5. That condition reserves to the Commission the power to impose such further specific conditions or limitations as may be found necessary in order to restrict Transport's operations to service which is auxiliary to, or supplemental of, rail service.

In performing public service at points on the Shreveport-Gladewater and Wills Point-Big Spring segments of its route, Transport operates as successor to certain independent motor common carriers under rights which it purchased from them. Transport considers that it is entitled to perform the same type of service as its predecessors formerly performed and, therefore, that the imposition of any restrictions would deprive it of the full scope and value of the purchased rights. In taking this position, however, it overlooks the conditions under which the Commission, division 5, approved the purchase of those rights, as is evident from the following discussion of the purchase cases in question.

In *Texas & P. Motor Transport Co.—Purchase—Johnson*, 5 M. C. C. 89, division 5 authorized the purchase by Transport of those portions of the operating rights of (1) W. A. Johnson, doing business as Johnson Motor Lines, between Abilene and Big Spring, Tex., and (2) Fort Worth Warehouse & Storage Company, Incorporated, between Dallas and Abilene, and between Eastland, Ranger, and Breckenridge, Tex., all over regular routes. In approving the purchases, division 5 stated (page 92):

> * * * Evidence as to how these highway and railway operations may be coordinated is similar in character and leads to the same conclusions reached in *Pennsyl-*

vania Truck Lines, Inc.—Control—Barker M. Frt., 1 M. C. C. 101, 5 M. C. C. 9 and 49, wherein we approved acquisition of a truck line by a railroad subsidiary. We there indicated the character and scope of approved and disapproved operations[5] * * *.

630 In *Texas & P. Motor Transport Co.—Purchase—Southern Transp.*, 5 M. C. C. 653, Transport was authorized to purchase the operating rights of Southern Transportation Company between Dallas and Wills Point and between Gladewater and Shreveport, over regular routes. In reaching the conclusion that the purchase should be authorized, it was stated:

> The proposed purchase is another step in the general plan of applicant and the railway toward the development of coordinated truck-and-rail service on merchandise freight in the entire territory served by the railway. The first step in that direction has been accomplished through authorization granted in *Texas & P. Motor Transport Co.—Purchase—Johnson, supra* as a result of which such service has been inaugurated from Dallas west to Big Spring with beneficial results. The authority herein sought will provide means for in part extending the same service eastward from Dallas to Shreveport. The proposed plan of operation will be identical to that now in effect between Dallas and Big Spring and contemplates the movement of merchandise cars to set out or concentration points along the line of the railway, from which distribution will be made to the smaller intermediate points by truck. * * * [page 655]
>
> The evidence introduced is similar in character to that outlined in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M. C. C. 101 and 5 M. C. C. 9 and 49, and leads to the same conclusions reached in that case, namely:
>
> > The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been

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[5] Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the Railroad itself, those which compete with an established motor carrier * * *. Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station service' * * *.

pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. * * * [page 656]

The record is convincing that the operating rights considered will be of great value to applicant and the railway towards effectuation of their announced plan to establish coordinated rail-motor service over the entire line of the railway * * *. [page 657]

No specific limitation upon the authority to be exercised was incorporated in the findings in either of the two described purchase proceedings except that no authority was granted to serve any point other than a station on the lines of the Railway. The authority granted in each instance, however, was made subject to such further limitations or restrictions as the Commission in the future might find necessary to impose in order to insure "that the service shall be auxiliary or supplementary to the train service of said railway company and shall not unduly restrain competition." The rights acquired from the Fort Worth Warehouse & Storage Company, Incorporated, Johnson Motor Lines, and from the Southern Transportation Company were assigned, respectively, No. MC-50544 (Sub-No. 5), No. MC-50544 (Sub-No. 6), and No. MC-50544 (Sub-No. 8). Appropriate certificates, conditioned in the manner described, have been issued Transport.

631 Assuming that, because of the fact the aforementioned five certificates do not contain condition 1, Transport may render public service at the points authorized in those certificates, certainly there can be no question of the Commission's power to impose such limitations or restrictions as will insure that the service Transport may hereafter render is to be limited to that which is auxiliary to, or supplemental of, rail service of the Railway. Each of these five certificates so provides. Also see *Interstate Commerce Commission v. Parker*, 326 U. S. 60. Moreover, it is clear that the operations which Transport was authorized to purchase were "those which are auxiliary or supplementary to train service." Compare No. MC-F-445, *The Rock Island Motor Transit Company—Purchase—White Line Motor Freight Company, Incorporated, et al.*, M. C. C. , decided March 4, 1946. The Commission should impose condition 1 in each of the five certificates held by Transport which does not now contain this condition.

As stated, No. MC-50544 (Sub-No. 11) was reopened for further hearing originally to determine, among other things, what, if any, authority should be granted Transport with respect to the transportation of freight between El Paso and Sierra Blanca for the T & N O. Condition 1 in Transport's certificate in No. MC-50544 (Sub-No. 11) limits the service which may be performed by Transport to that which is auxiliary to, or supplemental of, rail service of the Railway. Accordingly, a grant of authority to Transport to serve the T & N O requires only appropriate changes in condition 1.

Transport would render substituted service for the T & N O between El Paso and Sierra Blanca, 92 miles, serving all intermediate points, which is a segment of its presently authorized route, and would transport all commodities, except cotton in bales. Southern Pacific Transport Company, a corporation, of Houston, Tex., a subsidiary of the T & N O, holds an appropriate certificate authorizing it to render substituted service for the T & N O in the transportation of cotton during the season extending from August 1 to March 1, inclusive, over the route here sought by Transport and serving the same points. Both the T & N O and the Railway use the same tracks and the same station between El Paso and Sierra Blanca. The joint board recommended that condition 1 in the certificate issued in No. MC-50544 (Sub-No. 11) be modified and revised so as to authorize Transport also to render substituted service for the T & N O. As stated, no exceptions were filed to the order recommended. The Commission should make appropriate changes in condition 1 to allow Transport to render service for the T & N O.

Condition 2.—This condition provides that Transport shall not serve, or interchange traffic at, any point not a station on a rail line of the Railway or on certain other rail lines. All of Transport's certificates except two—No. MC-50544 (Sub-Nos. 14 and 19)—contain this condition. The points authorized in the Sub-No. 14 certificate[5a] do not appear to be stations on a rail line of the Railway, but those authorized in the Sub-No. 19 certificate[6] are

[5a] These points are the sites of the bomber assembly plant and the anchorage and dock space located approximately 6 and 9 miles, respectively, northwest of Fort Worth.

[6] Aledo, Brazos, Santo, Gordon, and Mingus, Tex.

632 such stations. Thus condition 2 has uniform application except possibly at the points authorized in the Sub-No. 14 certificate. With an appropriate exception to cover this situation, the Commission should impose condition 2 in all of Transport's outstanding certificates. The wording of condition 2 should be rephrased, however, by the elimination of the words "or interchange traffic at" as such words are superfluous since no motor carrier may interchange traffic at any point it does not have authority to serve.

Condition 4.—This condition is imposed in all of Transport's certificates except six—No. MC-50544 (Sub-Nos. 5, 6, 7, 8, 12, and 22)—and provides that all contractual arrangements between Transport and the Railway shall be reported to the Commission, and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties. In all matters relating to compensation between Transport and the Railway, the latter will in reality be dealing with itself and, so far as ultimate financial results to the Railway are concerned, it is immaterial what these arrangements may be. It is important, however, that they be properly adjusted, if we and the general public are to know whether Transport is actually operating at a profit or at a loss. It is for this reason that condition 4 is imposed in substituted-service certificates. See *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, 240. This reason applies with equal force to the six certificates which do not now contain condition 4. Accordingly, the Commission should impose condition 4 in the six aforementioned certificates.

Condition 3.—As shown in Appendix B, this condition, in one form or another, has application at certain of the points Transport is authorized to serve, but has no application at other points. Along the main line of the Railway, Transport's operations between New Orleans and Shreveport, approximately 327 miles, are subject to a prior-or-subsequent-rail-haul form of condition 3, hereinafter called the rail-haul condition. Operations between Shreveport and Big Spring, approximately 492 miles, and not subject to any form of condition 3 except that operations to or from seven small points[7] are subject to the rail haul condition.

[7] Operations to and from Forney and Mesquite, Tex., were authorized in No. MC-50544 (Sub-No. 9) and operations to and from Aledo, Brazos, Santo, Gordon, and Mingus, Tex., were authorized in No. MC-50544 (Sub-No. 19). See Appendix A for citations.

Operations between Big Spring and Pecos, approximately 133 miles, also are subject to the rail-haul condition. Operations between Pecos and El Paso, approximately 202 miles, are subject to a key-point form of condition 3, hereinafter called the key-point condition, which names Pecos and El Paso as key points.* In addition, operations to and from points between Texarkana and Fort Worth, approximately 245 miles, which route parallels another main line of the Railway through Sherman, Tex., are also subject to a key-point condition which names Texarkana and Fort Worth as key points. Summing up, operations at points on the above routes are subject to a rail-haul condi-
633 tion for approximately 460 miles, to a key-point condition for approximately 447 miles, and to no form of condition 3 for approximately 492 miles, except for the seven small points named in footnote 8. The same diversity of forms of condition 3 also governs operations on branch and connecting lines for substantial distances.

Condition 3 is used to restrict operations of motor carrier which are rendering substituted service for railroads, in order to insure that the substituted service will be coordinated with the rail service and also to prevent the rendering of service for which no need was shown. The exact form of this condition varies. In some instances, the Commission has imposed a railhaul condition, while in others it has imposed a key-point condition. As stated, Transport's certificates contain both forms of condition 3, while some of them do not contain any form of condition 3. Condition 5, in either of the two forms shown in Appendix C, however, empowers the Commission to change any of the first four conditions, within certain limits, or to add any one or more of the first four conditions.

We have heretofore proposed that the Commission impose conditions 1, 2, and 4 in each of Transport's outstanding certificates. The examiners are of the opinion that some form of condition 3 also is necessary in order to insure that Transport's substituted service will be limited to that which is auxiliary to, or supplemental of, the train service of the Railway and also to prevent the rendering of service for which no need was shown. One of the questions in these proceedings is what particular form or forms of condition 3 should be imposed.

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*Shipments may not be transported between key-points or through or to or from more than one key-point. For a further discussion of the term "key-point" see *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5, 11.

The determination of an appropriate form of condition 3 in certain circumstances often has been difficult, and so it is here, largely, because of the positions taken by the parties at the further hearing. Of the two forms just discussed, it is believed that the key-point condition, with one exception, would be the more appropriate because its imposition would require few if any, changes in the *substituted* service rendered by Transport.

At the original hearing in No. MC-50544 (Sub-No. 12), Transport listed the break-bulk or key-points on the Railway as follows: Marshall and Longview, Tex., New Orleans, Shreveport, Texarkana, Dallas, Fort Worth, Abilene, Big Spring, and El Paso. The Sub-No. 12 certificate names Fort Worth and Texarkana as key-points while El Paso and Pecos are named as key-points in the Sub-No. 11 certificate.

In the conduct of the present operations, Transport and the Railway transfer freight in large volume at Addis, La., Dallas, Fort Worth, and Big Spring, and in lesser quantity at Alexandria, La., Shreveport, and Abilene. However, many other points served by them may be transfer points, depending on the volume of freight and the rail and motor schedules.

The Railway normally handles merchandise freight in through cars in Louisiana from New Orleans to Addis, from New Orleans to Alexandria and Shreveport, from Shreveport to Addis, and from Addis to New Orleans. In Texas, it operates assigned merchandise cars daily from Dallas to Sweetwater, Tex., Shreveport, Texarkana, Marshall, Longview, Fort Worth, Abilene, Big Spring, and El Paso and from Fort Worth to Texarkana, Longview, Dallas, Abilene, Sweetwater, Big Spring, and El Paso. These cars do not return to Dallas or Fort Worth in scheduled service
634 as there is not enough merchandise traffic moving back to these two cities to warrant their assignment in such a service. From the two cities, however, merchandise traffic moves in substantial volume to the aforementioned outlying points in "east" and "west" Texas. The Railway endeavors to give both cities comparable service to both sections of Texas and, in so doing, operates several merchandise cars in shuttle service, almost hourly, between Dallas and Fort Worth. Approximately 80 per cent of the merchandise traffic from these two cities moves in rail cars and 20 per cent in motor vehicles. Rail cars are used as much as possible, wherever the train schedules permit satisfactory service, while motor vehicles are used chiefly

for freight received after train departures and for freight moving to the smaller points.

Transport operates motor vehicles on regular "runs" between the following points: New Orleans-Addis, Addis-Alexandria, Alexandria-Shreveport, Shreveport-Dallas, Dallas-Fort Worth, Fort Worth-Abilene, and also Dallas-Abilene. West of Abilene traffic is light and the "runs" depend on the tonnage available from day to day. Trips are generally made between Abilene, Big Spring, and Pecos, and between Big Spring and Hobbs, N. Mex., over the regular route through Monahans, Tex., and also over the alternate route through Lamesa, Tex.

From the above, it is evident that the operation of through package or merchandise cars is maintained from certain cities in one direction and that some of the points thus served in one direction differ from those served in the opposite direction. Fort Worth, Texarkana, and El Paso, however, are now key points and the Commission should not change them. Pecos, which is now a key point, requires special consideration and will be hereafter discussed. The Commission should name New Orleans, Alexandria, Shreveport, and Abilene as key points in addition to the three previously mentioned. New Orleans is the eastern terminus of the Railway, a division point, and serves as origin and destination of merchandise cars. Shreveport and Abilene are served as break-bulk points by the Railway. Alexandria also receives freight in through cars. Each of the latter three points is a city of commercial importance and each is located on the main line of the Railway. Although the Railway unquestionably distributes a substantial quantity of merchandise freight at Dallas, it should not be named as a key point because of the practice of the Railway in rendering comparable service from both Fort Worth and Dallas to a number of points. Moreover, Dallas and Fort Worth are only about 33 miles apart. However, the Commission should prohibit Transport from rendering service from either Dallas or Fort Worth to certain cities which normally receive merchandise freight in through cars daily. The same also applies to the other points named in the proposed findings herein.

As stated, Pecos is named as a key point in the Sub-No. 11 certificate which Transport now holds. However, Pecos, population 4,855, is neither a division point nor is it a break-bulk point on the Railway. Neither is it an origin or destination of merchandise cars. At the further hearing in

No. MCC-50544 (Sub-No. 11) before the joint board, Transport asked that condition 3 in its certificate be changed to read as follows:

635 No shipment originating at or destined to points east of Big Spring, Tex., shall be transported by applicant [Transport] unless the movement east of Big Spring shall be performed by the rail service of the Railway into or out of Big Spring.

The territory between Big Spring and El Paso, a distance of 347 miles, is sparsely settled and tonnage originating or terminating at points on the route is so light that operation of a regularly schedule merchandise car is impracticable. Transport asserts that the naming of Big Spring as a key point would not correct fully the situation as it would still be prevented from handling freight from El Paso to Big Spring by motor vehicle as such tonnage would have to be transferred to local way freight at some point west of Big Spring and again at the latter point to the rail merchandise car for movement east. In the circumstances, the Commission should impose the form of condition 3 suggested by Transport in the Sub-No. 11 certificate for shipments moving to and from points west of Big Spring. But it should also be made applicable to Transport's other certificates authorizing service at points west of Big Spring.

As stated, some difficulties have been encountered in determining which points are actually the key points in all instances in view of the limited record with respect thereto.

Temporary authorities.—Transport now holds certain temporary authorities to conduct described operations in interstate or foreign commerce. Three of these temporary authorities, namely, No. MC-50544 (Sub-Nos. 21TA, 24TA, and 30TA), are included in these proceedings to determine what, if any, changes or modifications should be made in the conditions contained in such authorities. Each of these temporary authorities expires not later than June 30, 1946, unless otherwise ordered. In the circumstances, it is not deemed necessary herein to prescribe any changes in the conditions in these temporary authorities held by Transport, and the Commission should so find.

General—The certificates now held by Transport authorize it to carry (1) general commodities, with no exceptions, and (2) general commodities, with certain exceptions. These exceptions are not uniform and generally are different in each certificate. For this reason, it would be difficult to

issue Transport an amended certificate embracing the authority contained in all the certificates it now holds. Section 212 (a) of the act, however, provides, in part, that a certificate may, upon application of the holder thereof, in the discretion of the Commission, be amended in whole or in part. Accordingly, it is suggested that Transport give consideration to this question of amending all of its certificates so that the authority to transport general commodities will be the same in each certificate. In this connection, it may be observed that insofar as Transport is authorized to render only substituted service, it should be granted authority as broad, from a commodity standpoint, as
636 the Railway's less-than-carload rail service. See *Pacific Motor Trucking Co. Common Carrier Application*, 34 M. C. C. 249, 258.

The Commission should find:

A. That the certificates heretofore issued The Texas and Pacific Motor Transport Company in No. MC-50544 and No. MCC-50544 (Sub-Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 14, 19, and 22) authorizing it as a common carrier by motor vehicle to conduct certain described operations, in interstate or foreign commerce, should be modified (except as to certain of the operating rights authorized in No. MC-50544 (Sub-No. 12) as described in footnote 4), so as to require that all future operations thereunder be conducted subject to the following conditions and restrictions:

1. The service to be performed by The Texas and Pacific Motor Transport Company, hereinafter called Transport, shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company, of the Texas-New Mexico Railway Company, of the Jefferson & Northwestern Railroad Company, and of the Texas and New Orleans Railroad Company, hereinafter called the Railways.
2. Transport shall not serve any point not a station on the rail line of the Railways, unless otherwise authorized in its certificates.

3A. No shipment originating at or destined to points east of Big Spring, Tex., shall be transported by Transport to or from points west of Big Spring unless the movement east of Big Spring shall be performed by the rail service of the Railways into or out of Big Spring.

3B. No shipments shall be transported by Transport as a common carrier by motor vehicle between New Orleans, La., and Addis, La., nor between Shreveport, La., and Dallas, Tex., nor from Dallas, Tex., to Texarkana, Tex.-Ark., Marshall and Longview, Tex., nor from Fort Worth, Tex., to Longview, Tex., nor between any of the following points, or through, or to or from more than one of said points: New Orleans, Alexandria, and Shreveport, La., Texarkana, Ark.-Tex., and Fort Worth, Abilene, and El Paso, Tex.

4. All contractual arrangements between Transport and the Railways shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

637 5. Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, rail service of the Railways.

B. That at this time it is unnecessary to impose any further conditions or restrictions in the temporary authorities heretofore issued Transport in No. MC-50544 (Sub-Nos. 21-TA, 24-TA, and 30-TA).

C. That amended certificates, conforming with the above findings, should be issued to Transport in No. MC-50544 and No. MC-50544 (Sub-Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19, and 22) to supersede those now held by it.

An appropriate order should be entered.

638 *Appendix A*

Proceedings[1] embraced in report and citations to prior reports

[1] No. MC-50544 and No. MC-50544 (Sub-Nos. 1, 2, 3, 4, 7, 9, 10, and 14) were also the subject of a prior report, 41 M. C. C. 721. No. MC-50544 (Sub-Nos. 5, 6, and 8) are the numbers assigned to the rights acquired from the Fort Worth Warehouse & Storage Company, Incorporated, Johnson Motor Lines, and from the Southern Transportation Company, respectively, pursuant to the findings in *Texas & P. Motor Transport Co.—Purchase—Johnson*, 5 M. C. C. 89, and in *Texas & P. Motor Transport Co.—Purchase—Southern Transp.*, 5 M. C. C. 653.

No. MC-50544, The Texas and Pacific Motor Transport Company Common Carrier Application. Prior report, 12 M. C. C. 37.

No. MC-50544 (Sub-No. 1), The Texas and Pacific Motor Transport Company Common Carrier Application—Louisiana. Prior reports, 10 M. C. C. 525 and 30 M. C. C. 487.

No. MC-50544 (Sub-No. 2), The Texas and Pacific Motor Transport Company Extension—Wills Point-Gladewater, Tex. Prior reports, 14 M. C. C. 645, and 31 M. C. C. 500.

No. MC-50544 (Sub-No. 3), The Texas and Pacific Motor Transport Company Extension—Big Spring-Pecos, Tex. Prior reports, 14 M. C. C. 649, and 30 M. C. C. 487.

No. MC-50544 (Sub-No. 4) The Texas and Pacific Motor Transport Company Extension—Marshall-Texarkana, Tex. Prior reports, 20 M. C. C. 593, and 30 M. C. C. 487.

No. MC-50544 (Sub-No. 5), The Texas and Pacific Motor Transport Company Extension—Dallas-Abilene, Tex.

No. MC-50544 (Sub-No. 6), The Texas and Pacific Motor Transport Company Extension—Abilene-Big Spring, Tex.

No. MC-50544 (Sub-No. 7), The Texas and Pacific Motor Transport Company Extension—Alternate Routes. Prior report, 31 M. C. C. 1.

No. MC-50544 (Sub-No. 8), The Texas and Pacific Motor Transport Company Extension—Dallas-Wills Point, Tex.

No. MC-50544 (Sub-No. 9), The Texas and Pacific Motor Transport Company Extension—Mesquite-Forney, Tex. Prior report, 23 M. C. C. 884.

No. MC-50544 (Sub-No. 10), The Texas and Pacific Motor Transport Company Extension—Big Spring-Hobbs. Prior report, 30 M. C. C. 465.

No. MC-50544 (Sub-No. 11), The Texas and Pacific Motor Transport Company Extension—Pecos-El Paso, Tex. Prior report, 33 M. C. C. 38.

No. MC-50544 (Sub-No. 12), The Texas and Pacific Motor Transport Company Extension—Texarkana. Prior report, 32 M. C. C. 854.

No. MC-50544 (Sub-No. 14), The Texas and Pacific Motor Transport Company Extension—Fort Worth, Tex. Prior report, 30 M. C. C. 852.

639 No. 50544 (Sub-No. 19), The Texas and Pacific Motor Transport Company Extension—Aledo, Tex. Prior report, 34 M. C. C. 813.

No. MC-50544 (Sub-No. 21-TA), The Texas and Pacific Motor Transport Company, Tete Cove Extension.

No. MC-50544 (Sub-No. 22), The Texas and Pacific Motor Transport Extension—Dallas-Fort Worth. Prior report, 32 M. C. C. 878.

No. MC-50544 (Sub-No. 24-TA), The Texas and Pacific Motor Transport Company Tarrant Air Base Extension.

No. MC-50544 (Sub-No. 30-TA), The Texas and Pacific Motor Transport Company Point Blue-Chataignier, La., Extension.

640 *Appendix B*

Summary of present conditions applicable at authorized points, in geographical order, on the lines of The Texas and Pacific Motor Transport Company.

Main Line	*Points*	**Conditions*
New Orleans-Shreveport	New Orleans-Alexandria-Cypress, La.	1, 2, 3-A, 4, 5
" "	Cypress-Natchitoches-Shreveport, La.	1, 2, 3-A, 4, 5
" "	Cypress-Pleasant Hill- " "	1, 2, 3-A, 4, 5
Shreveport-Fort Worth	Shreveport, La.-Gladewater, Tex.	2 and 5-A
" "	Gladewater-Wills Point, Tex.	1, 2, 4, and 5
" "	Wills Point-Terrell, Tex.	2 and 5-A
" "	Forney-Mexquite, Tex.	1, 2, 3, 4, 5
" "	Dallas-Fort Worth, Tex. (via Arlington, Tex.)	2 and 5-A
" "	Dallas-Fort Worth, Tex. (via Euless, Tex.)	2 and 5-A
Fort Worth-El Paso	Fort Worth-Lona, Tex.	2 and 5-A
" "	Aledo, Tex.	1, 3, 4, 5
" "	Anneta-Bennett, Tex.	2 and 5-A
" "	Brazos-Mingus, Tex.	1, 3, 4, 5
" "	Strawn-Abilene, Tex.	2 and 5-A
" "	Abilene-Big Spring, Tex.	2 and 5-A
" "	Big Spring-Pecos	1, 2, 3-A, 4, 5
" "	Pecos-El Paso	1, 2, 3-C, 4, 5
Branch Lines	*Points*	*Conditions*
Napoleonville	Donaldsonville-Napoleonville, La.	1, 2, 3-A, 4, 5
Thibodaux	Napoleonville-Thibodaux, La.	1, 2, 3-A, 4, 5
New Roads	Addis-New Roads-Torras, La.	1, 2, 3-A, 4, 5
Opelousas	Melville-Opelousas-Crowley, La.	1, 2, 3-A, 4, 5
Simmesport	Melville-Simmesport-Bunkie, La.	1, 2, 3-A, 4, 5
Marksville	Cottonport-Marksville, La.	1, 2, 3-A, 4, 5
Ville Platte	Bunkie-Ville Platte, La.	1, 2, 3-A, 4, 5
Texarkana-Marshall	Texarkana-Marshall, Tex.	1, 2, 3-A, 4, 5
Texarkana-Fort Worth	Texarkana-Fort Worth, Tex.	1, 2, 3-B, 5
Ft. Worth Bomber Plant	Ft. Worth-Ft. Worth Bomber Plant, Tex.	1, 4 and 5
Mineral Wells	Weatherford-Mineral Wells, Tex.	2 and 5-A
Hobbs	Big Spring, Tex.-Hobbs, N. Mex. (via Lamesa, Tex.)	1, 2, 4, 5
Hobbs	Monahans, Tex.-Lovington, N. Mex.	1, 2, 4, 5

* See appendix C for wording of the conditions.

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Appendix C

Explanation of present conditions referred to in Appendix B.

(The exact wording of the conditions varies in some instances but is essentially as follows.)

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the railway.
2. Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railway.
3. Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

3-A. Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

3-B. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points or through or from more than one of said points: Fort Worth, Tex. Texarkana, Tex. Ark.

3-C. No shipments shall be transported by applicant between any of the following points, or through, or to, or from more than one of said points: El Paso and Pecos, Tex.

4. All contractual arrangements between applicant and the railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.
5. Such further specific conditions as we, in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

5-A. The authority herein granted shall be subject to such further limitations or restrictions as this Commission may hereafter find it necessary to impose in order to restrict applicant's operations to service

which is auxiliary to, or supplemental of, train service of said railway company, and in order to insure that service rendered shall not unduly restrain competition.

642. *Appendix D*

Summary of conditions imposed in outstanding certificates.

No. MC	*Conditions Imposed*				
50544	1	2	–	4	5
Sub-No. 1	1	2	3-A	4	5
Sub-No. 2	1	2	–	4	5
Sub-No. 3	1	2	3-A	4	5
Sub-No. 4	1	2	3-A	4	5
Sub-No. 5	–	2	–	–	5-A
Sub-No. 6	–	2	–	–	5-A
Sub-No. 7	–	2	–	–	5-A
Sub-No. 8	–	2	–	–	5-A
Sub-No. 9	1	2	3	4	5
Sub-No. 10	1	2	–	4	5
Sub-No. 11	1	2	3-C	4	5
Sub-No. 12	1	2	3-B	–	5
Sub-No. 14	1	–	–	4	5
Sub-No. 19	1	–	3*	4	5
Sub-No. 22	–	2	–	–	5-A

* See appendix C for wording of the conditions.

645 Before the Interstate Commerce Commission

Docket No. MC-50544*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY COMMON CARRIER APPLICATION

Exceptions on Behalf of The Texas and Pacific Motor Transport Company to the Proposed Report of Examiners Waters and Boss

(Due August 26, 1946)

PRELIMINARY STATEMENT

Except as hereinafter otherwise pointed out, the Examiners have given on Sheets 1 and 2 of their proposed report a fairly comprehensive outline of the developments in these

* Includes also the sub-numbers listed in the proposed report.

proceedings prior to the further hearing held at Dallas on October 17, 1944. In the last paragraph on Sheet 2 they likewise have undertaken to review the proceedings at said hearing, but such review does not in our opinion adequately set forth what actually transpired on that occasion, and to remedy that deficiency we deem it appropriate to preface our exceptions with a more detailed outline of the proceedings.

646 At the outset of the hearing (R. 81, 85, 88, 92), counsel for The Texas and Pacific Motor Transport Company, hereinafter designated as Transport, sought enlightenment of the Examiner as to the purpose of the assigned hearing, in which connection he made in effect the following statement of Transport's position (R. 82-85):

After the Commission (Division 5) entered its order of January 21, 1943, 41 M. C. C. 721, wherein Transport was admonished to change certain of its operations, the latter filed its petition of May 20, 1943, in which the Commission was requested, among other things, to permit The Texas and Pacific Railway Company to participate in designated truck tariffs. Certain modifications or changes in the third condition in the various certificates held by Transport were likewise sought. It was further requested as an alternative proposition, provided the Commission did not agree to the foregoing, that all cases be assigned for hearing. That petition was denied by the entire Commission on February 14, 1944, and on the same date Division 5 reopened the cases for further hearing.

Thereafter, about May, 1944, Transport and The Texas and Pacific Railway Company obtained permission from the Commission for the latter to become a party to the motor carrier tariffs, whereupon said Railway Company did in fact become a party to such tariffs. On August 5, 1944, Transport accordingly again petitioned the Commission, pointing out that it had granted what was prin-

647 cipally sought in the petition of May 20, 1943, that is, permission for The Texas and Pacific Railway Company to become a party to certain motor carrier tariffs, and asked that no further hearings be held, this for the reason that the request for further hearing was merely in the alternative and in the event the other relief sought was denied. That petition was denied by order dated August 30, 1944, at which time the proceedings were assigned for the hearing held at Dallas on Oct. 17, 1944. Since The Texas and Pacific Railway Company had been permitted to participate in the motor carrier tariffs, it was accordingly announced that, except as to Sub-No. 11, Transport does not

desire any change in or removal of any of the conditions in its certificates, but simply desires that it be allowed to continue to operate as it was doing at the time of the hearing.

Thereupon, following an inquiry addressed to the Examiner as to whether, since Transport desires no change in its certificates, the Commission contemplates the making of any change in the certificates held by Transport, and his response that, so far as he was able to advise, no change is contemplated except such as might develop as the result of any evidence produced at the hearing, counsel for Transport (R. 88) stated that all it desires is to be left as it is and requested permission to abandon the hearing. The Examiner, however, suggested that it would be sufficient for Transport to explain its present operations and then, if the parties have any objections, that would clarify
648 the matter. It was thereupon announced that a witness was present who could explain the operations of Transport, but that otherwise Transport had made no preparation for the hearing (R. 88-89).

The witness (T. E. Huffman) was produced and sworn at this juncture. Before his interrogation was begun, however, counsel for one of the intervening motor carriers asked for information as to the purpose of his testimony, explaining that his clients had no protest to offer in view of the statement of counsel for Transport that it was seeking no modification or amendment of its present operating authority (R. 90-93). Other intervenors thereupon announced their joinder in the motion to dismiss (R. 93-96), whereupon counsel for Transport requested permission to withdraw witness Huffman, stating that Transport offered no evidence at the hearing (R. 98). Counsel for the respective intervenors thereupon announced they had no evidence to offer. (R. 98-99).*

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*Frank C. Brooks, representing Dallas-Fort Worth Motor Freight Lines; East Texas Motor Freight Lines; English Freight Company; Gillette Motor Transport, Inc.; Herrin Transportation Company; Houston & North Texas Motor Freight Lines, Inc.; and Northeast Texas Motor Lines, Inc.

Frank H. Rawlings, representing H. E. English d.b.a. Red Ball Motor Freight Lines.

Cecil A. Morgan, representing Braswell Motor Freight Lines.

Ed P. Byars, representing Fort Worth Freight Bureau and Fort Worth Chamber of Commerce.

Ralph W. Currie, representing Dallas Chamber of Commerce.

Joe T. Steadham, representing the Brotherhood of Railroad Firemen.

C. M. Mulholland, representing Railway Labor Executives Association.

Robert J. McBride, representing American Trucking Associations, Inc.

649 The Examiner, however, declined to permit the withdrawal of Mr. Huffman as a witness (R. 99), in which connection counsel for Transport stated he wanted the record to be clear that Mr. Huffman was not offered as a witness, although he was available if the Examiner should desire to call him (R. 99-100). This was followed by the announcement by counsel for Transport that he had no questions to ask the witness (R. 100) and by counsel for certain intervenors that they likewise had no questions to ask, whereupon in view of the condition of the record counsel for one of the intervenors objected to any testimony going into the record, which objection was overruled by the Examiner (R. 101). The same objection was made by counsel for Transport and overruled by the Examiner (R. 103), but on inquiry the Examiner agreed that all parties would be given a running objection to the testimony to be given by the witness.

Witness Huffman was thereupon interrogated at some length by the Examiner (R. 103-37, 139-42), with cross-examination by counsel for an intervenor on a limited issue (R. 137-139). At the conclusion of the testimony, counsel for Transport renewed his objections to the evidence, as previously made, and in the alternative, and only in the event that the Commission should conclude to make any change in Transport's certificates as a result of the hearing, requested that Transport be accorded "additional hearings for the purpose of introducing shipper witnesses and at different places along the routes of these certificates." Counsel additionally announced (R.
650 143-44) that Transport should have advance notice of any changes which the Commission might propose to make in its certificates to enable it to properly conduct a hearing in connection with any changes that might be contemplated, it being felt that Transport is legally entitled to a more sufficient notice than that afforded by the order of Division 5 on August 30, 1944. Upon inquiry of the Examiner as to whether Transport relied upon such notice or made any effort to determine the purpose of the hearing (R. 144), counsel stated that Transport had requested that no hearings be held, which request was denied, and that Transport relied on the notice as far as it goes, but did not rely on it as to the production of evidence, etc., because it was not known what the Commission wanted.

Counsel for the shipping interests of Dallas thereupon expressed entire satisfaction with the present operations of Transport and stated (R. 145) that they should be given

notice in advance of any hearing of any changes which the Commission may contemplate in the operations of Transport, which statement was concurred in on behalf of the shipping interests of Fort Worth. Other intervenors thereupon expressed their objection to any change in the status of Transport's operations being made without ample notice in advance and an opportunity to be heard on the issue (R. 146-147). In short, it was the view of all concerned that there should be no change made in the status quo of Transport's operations without full notice to all concerned
651 of what changes are contemplated and without full opportunity being afforded for anyone interested or affected to be heard thereon.

In the light of the foregoing, as well as of other facts of record, Transport excepts as follows to the findings and recommendations of the Examiners in their aforesaid proposed report:

EXCEPTION No. 1.

In view of Transport's petition of August 3, 1943 requesting that no further hearings be held herein in consequence of The Texas and Pacific Railway Company being allowed to become a party to appropriate motor carrier tariffs, and of the disclaimers by intervenors at the hearing of any objection to the present operations of Transport the Examiners erred in failing to recommend to the Commission that all proceedings be discontinued and that each of the cases involved be dismissed.

EXCEPTION No. 2.

When it developed at the hearing that no party at interest had any questions to propound or desired any change in the present operations of Transport, the presiding Examiner erred in denying the motion of Transport to withdraw its traffic officer, T. E. Huffman, as a witness and in proceeding with his ex parte examination in the absence of advance notice to Transport and other parties at interest of the specific purpose of the hearing in order that they might be definitely informed
652 *of the issues that were to be presented, and be prepared accordingly.*

EXCEPTION No. 3.

Transport excepts to the failure and refusal of the presiding Examiner to sustain objections made to the introduction of any evidence in the absence of any controversial

issue and to discontinue the hearing on motions to that effect when it developed that no party at interest had any questions to propound or desired any change in the present operations of Transport.

EXCEPTION No. 4.

Transport excepts to the finding at the bottom of sheet 6 of the proposed report that the points authorized in the Sub-No. 14 certificate do not appear to be stations on the line of The Texas and Pacific Railway Company.

EXCEPTION No. 5.

To the extent that a similar provision does not appear in existing certificates issued to it, Transport excepts to Examiner's recommendation contained in Condition of Restriction No. 1 (Sheet 11) that services to be performed by Transport shall be limited to service which is auxiliary to, or supplemental of rail services of the lines named therein. (Incidently the Jefferson and Northwestern Railroad Company should be eliminated because it has long since been abandoned.)

653

EXCEPTION No. 6.

Transport excepts to that portion of Examiner's recommendation contained in Condition or Restriction No. 3B (Sheet 11) which would prevent the movement of shipments by Transport between New Orleans and Addis, Louisiana and likewise that portion of said condition or restriction which would prevent the movement of shipments by Transport between Alexandria and Shreveport, Louisiana.

ARGUMENT UNDER EXCEPTIONS 1, 2 AND 3.

As remarked by the Examiners at the outset of their proposed report, in its decision of January 21, 1943 Division 5 observed that Transport would be expected within a reasonable time to conform to the finding incorporated therein, but suggested that Transport might file a petition for further hearing, should it so desire, for authority to perform an unrestricted motor-vehicle service. Accordingly, by petition dated May 20, 1943, Transport in part asked the Commission to grant special permission to The Texas and Pacific Railway Company to participate in designated motor carrier tariffs, but as an alternative sought a further hearing in the event the aforesaid special permission and other relief sought therein should be de-

nied. By order dated February 14, 1944, the relief so sought was denied, and the cases were reopened by Division 5 for further hearing. Before setting a date for further hearing therein, however, on application of J.
654 D. Hughett and Middlewest Motor Freight Bureau, Agents, the Commission on May 18, 1944, by its permission number M-43103, number 21008, authorized The Texas and Pacific Railway Company, the Pecos Valley Southern Railway Company, and the Texas-New Mexico Railway Company to participate in certain motor carrier tariffs published by said Agents to the extent indicated in the order in question.

Following such action of the Commission, Transport withdrew its alternative request for further hearing, but the Commission nevertheless, in disregard thereof, assigned the cases for hearing on October 17, 1944, "solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to the Texas and Pacific Motor Transport Company." Nothing contained in said notice or order of the Commission afforded Transport or other parties at interest any clue which would enable them to determine what issues they would be confronted with at such further hearing or the nature of the modifications of its certificates that the Commission might have in mind. Since neither Transport nor any other interested party was seeking a further hearing with regard to Transport's certificates, and no one had registered any objection to its operations thereunder, it will be observed that the further hearing thus assigned by the Commission was in the nature of an *ex parte* proceeding on the Commission's own motion. That being true, it is sub-
655 mitted that we have here an analogous situation to that under review in *United States ex rel. St. L. S. W. R. Co. v. Interstate Commerce Commission*, 264 U. S. 64, decided February 18, 1924. That case involved an attack upon the tentative valuation made by the Commission of relator's property, in connection with which the Commission had denied a motion filed by relator with the Commission for "an order allowing it to examine the underlying data upon which the valuation was based, and for a subpoena duces tecum to named officers of the Commission, directing them to bring with them to the hearing all the data in any way relating to the matter in issue." The Commission thereupon entered an order that the records

in the Bureau of Valuation "should not be open to inspection by other than the employees of the Commission unless and until offered in evidence at hearings or before a court," following which relator filed its petition for mandamus. The case eventually reached the Supreme Court and the following excerpt is taken from the opinion of that tribunal, at pages 78-79:

> "* * * The hearing, to be sure, is not of the ordinary kind. The railroads have no adversary. The Commission, of course, has no object except to arrive at the truth. It is not to be cross-examined for bias or otherwise as to its capacity to decide or modes of deciding what is intrusted to it; but, on the other hand, since it must grant a hearing, manifest justice requires that the railroads should know the facts that the Commission supposes to be established, and we presume that it would desire the grounds of its tentative valuation to be subjected to searching tests. But there are necessary limits.
> * * * But, subject to that discretion, we think that
> 656 in such way as may be found practicable the relator should be enabled to examine and meet the preliminary data upon which the conclusions are founded, and to that end should be given further information in advance of the hearing, sufficient to enable it to point out errors if any there be."

So it is here. To inform Transport and other interested parties of what issues they would be confronted with at the further hearing assigned by the Commission on its own motion, and to enable them to make adequate preparation therefor, the Commission should have given advance notice of the specific changes or modifications in the conditions contained in Transport's certificates which the Commission had in mind. In that way the parties could have come to the hearing adequately prepared with witnesses and appropriate data to meet the issues thus defined by the Commission. As it was, though, after Transport had renewed its prior notice that it did not desire any change in its certificates and requested a discontinuance of the proceedings, and after intervenors announced they had no protest to offer and no questions to ask, the presiding Examiner nevertheless insisted on proceeding with the hearing and himself undertook an ex parte examination of the witness. Before such examination began, however, counsel for one of the intervenors made inquiry of the Examiner as to the purpose of the

testimony to be elicited by him. Following some discussion of the matter, the following exchanges occurred (R. 90-92):

"Mr. RAWLINGS: That is where I get lost in the proceedings. I understand from the statement of
657 counsel for applicant that they are seeking no modification or amendment of the present operating authority, and that being true, the client I represent, has no protest to offer. If you are opening this case up on this testimony with the view of changing or modifying or eliminating any restrictions, that puts a different aspect on the hearing. The applicant having stated on the record that they seek no modifications, and that they want to withdraw their original application, I don't understand the purpose and effect of the testimony that is now being adduced, unless the Commission has some suspicion that they are not operating in keeping with their restrictions, which would be an enforcement problem rather than a modification of the authorities. I just want to get clear on the record, so I will know how to represent my client here.

"Exam. WATERS: I don't think the Commission has any suspicion that they are doing anything they are not supposed to do. I am not qualified to speak for the Commission, but it would seem to me that if they were operating unlawfully, we would have had some complaint before this.

"Mr. RAWLINGS: I don't see that that is properly in this proceeding here, and therefore I don't understand why you have to have some testimony to reaffirm the authority they already have, when nobody is trying to make any change in it.

"Exam. WATERS: There is no change contemplated in the certificates, in the routes, or points between which they operate. There may be some change in the conditions. That depends on what is introduced here.

"Mr. RAWLINGS: Well, there has been no issue made. I am not trying to argue with you, but—

"Exam. WATERS: Yes.

658 "Mr. RAWLINGS: I am trying to clarify it. The applicant says they don't want any changes made, and the protestants are not asking for any changes to be made that I know anything about, and the applicants ask to withdraw their application and close

the hearing, so it looks like we are trying to make an issue where none exists.

"Exam. WATERS: Well, I don't know that they—that is, the Commission—have any knowledge of just how the applicant is operating. Maybe if they had that knowledge,—

"Mr. RAWLINGS: They have knowledge of their present operating authority, and it is presumed they are operating in keeping with the authority they have, so I don't know what purpose the hearing will serve. I presume they are operating lawfully, within the terms of their authority, so I don't know why they have to have a hearing and some testimony to see whether or not they are operating properly under the authority they have in their present operation, when there is no complaint about their operations. In other words, I just don't know what the issue is, and I want to know what the issue here is so I will know how to keep up with it. Right now I am lost. I don't know what it is."

We likewise invite the attention of the Commission to the following observations made at the close of the hearing (R. 145) by representatives of the Dallas and Fort Worth Commercial interests:

"Mr. CURRIE: On behalf of the shipping interests of Dallas, which is the city, I think, probably the most vitally affected by this operation throughout the territory served by this applicant, and because the regulation is supposed to be in our interest, we think that if the Commission should determine to make any
659 changes in this operation that we, as the persons most vitally affected, all are entitled to notice of just what is specifically proposed, so that we may at that time, and in advance of any hearing, determine what effect such specific proposal would have on our operations, so that we would then know how to go about deciding whether such specific contemplated change is needed, or is in the interest of the particular part of the public which we are.

"Mr. BYARS: Our position is substantially the same as that of Mr. Currie. Fort Worth is very vitally interested and affected by any change that might be made in the operations of the T. & P. Railroad and the T. & P. Motor Transport Company, and we certainly had no idea what was in the mind of the Commission, so I was very glad to hear the Examiner say that the Commis-

sion had no preconceived notions or ideas as to what might be done. We are satisfied with the operation of these two carriers; we depend upon them very largely to get our freight to destinations, and we want them to remain as they are."

Only recently, we are afforded the benefit of an expression of the legislative intent as respects the legal rights of litigants before agencies to which are instructed the administration of the law of the land. We have reference to the Administrative Procedure Act, Public No. 404, approved June 11, 1946. So far as is here relevant, we quote as follows from Section 5 of that enactment.

"Sec. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, • • • :

"(a) *Notice.*—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, the nature thereof; (2) the legal authority and jurisdiction under which the hearing is
660 to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. • • • "

We fully appreciate that the foregoing section of the statute has not yet become effective, and likewise that by its terms the statute is not mandatory as to any agency proceeding initiated prior to its effective date, but we do submit that the above affirmatively reflects the legislative concept of what constitutes due process of law in the conduct of hearings by administrative agencies.

Argument Under Exception 4

These points are served by a spur track that branches off from the Texas & Pacific main line near Benbrook, a station immediately west of Fort Worth, and shipments made to the plants located thereon, both carload and less-than-carload, are billed to Benbrook (R. 16).

Argument Under Exception 5

As outlined by the Commission in its report of January 21, 1943, and by the Examiners in their proposed report, for the past several years Transport has been seeking to have its operating rights clearly defined and stated. A

petition to that end was filed with the Commission, which in due course led to the Commission's said report of 1943. (41 M. C. C. 721.) That, however, was in no sense
661 satisfactory to Transport, and accordingly, in May, 1943, a petition was filed with the Commission on behalf of both Transport and The Texas and Pacific Railway Company, this in line with the suggestion thrown out in the concluding paragraph of said 1943 report. That petition asked for reconsideration and oral argument, for modification of Supplement No. 5 to Tariff Circular No. 20, and, in the alternative for further hearing. The petition was denied, except that the cases were reopened for further hearing; but before a date for such further hearing was announced The Texas and Pacific Railway Company, with the authorization of the Commission, became a party to appropriate motor carrier tariffs, as aforesaid. Thereupon, the alternative request for further hearing was withdrawn, but the cases were assigned for further hearing, nevertheless.

That brings us to a consideration of the situation now confronting Transport. The problem involves two classes of certificates. One includes certificates issued direct to Transport as such, while the other relates to common carrier certificates purchased and acquired by Transport in conformity with Section 213 (now Section 5) of the Act. (These purchases, three in number, are commented upon at sheets 4 and 5 of the proposed report.) Under the first class Transport performs only a substitute service, but under the second Transport has been and is performing a common carrier service corresponding to that performed by its predecessors in interests. This is precisely what Transport desires to continue to do.

662 With reference to the second class of certificates, or those certificates purchased by Transport, Transport believes that since the public has long used the common carrier services offered by Transport's predecessors in interests and by Transport itself since the purchase of the certificates in 1937 and 1938, that it would now be unfair to deprive the public of such services heretofore rendered. Transport's predecessors in interests were independent common carrier motor carriers; that is they issued bills of lading and transported freight under all-motor local and joint rates. This type of service was continued by Transport on purchase of the involved rights and has been so continued up until the present time. The recommendation of the Ex-

aminers in Condition or Restriction No. 1 (Sheet 11) would take away this right from Transport and likewise deny the public the benefits of a motor carrier service which they have enjoyed for a great number of years. In addition to eliminating the service that the public has long used, such condition or restriction would deprive Transport of a substantial part of what it paid for in the purchase of said Certificates. At this point, Transport desires to again call the Commission's attention to what has heretofore been said with reference to the intervenors joining with Transport in asking that all proceedings be dismissed and that Transport be allowed to continue its operations. Certain of those intervenors operate common carrier motor carriers and normally are competitors of Transport, yet their satisfaction of Transport's existing operations was expressed by their willingness to allow Transport
663 to continue its operations. Transport contends that its competitors would certainly be the first to object to any unfair or unreasonable advantage that Transport might be granted. It is significant that their action testifies to their belief that Transport is entitled to the rights of its predecessors in interests. The Commission's attention is directed to the fact that intervenors representing the shipping and receiving public had no objection to the operation of the applicant but only desired that if any changes were contemplated that would deprive them of the long-time use of the services rendered by Transport that they be given the right to be heard and enter their protest.

In addition to the above desires of Transport's competitors and the shipping public, Transport calls the Commission's attention to the fact that at the time of Transport's purchase of certain operating rights of Johnson Motor Lines, Ft. Worth Warehouse and Storage Company and Southern Transportation Company, the Commission specifically ordered and directed Transport to publish its rates in conformity with Section 217 which covers the tariffs of common carriers by motor vehicles. This circumstance alone constitutes a contemporaneous tacit recognition by the Commission that Transport was authorized to operate as a common carrier under its purchase of the certificates in question.

Transport was not organized with the thought that its operations would be confined to such an abnegated

664 role of performing only a substitute service. Thus, among the varied activities in which it is authorized to engage, as set forth in its Articles of Incorporation, besides conducting the business of a common carrier by any means whatsoever, and partly by one means of transportation and partly by another, and/or by arrangement or contract with other common carriers, it may lease, contract with and otherwise deal in truck, bus, stage or other transportation lines and systems, as will be noted from the following purpose paragraphs we have lifted from that document:

> "(a) To engage in and conduct the business of a common carrier for the forwarding and/or transportation for hire of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description, by any means whatsoever, and partly by one means of transportation and partly by another means of transportation, and/or by arrangement or contract with other persons, business concerns, corporations or common carriers.
>
> "(b) To establish and maintain a line of stages, motor coaches and motor trucks to be operated as common carriers; to own, maintain, conduct, operate, manage, buy, sell, lease, contract with and otherwise deal in truck, bus, stage or other transportation lines and systems for the forwarding, carrying and transportation of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description; to procure, own, operate under, buy, sell, lease, mortgage or otherwise deal with the franchises, licenses, grants and certificates for the operation, control, conduct and/or management of bus, truck, stage or other transportation lines."

665 Looking to prior decisions of the Commission on the subject, we find nothing to support the belated charge now advanced that the participation by rail transport companies in common carrier operations is unlawful. For example, the following observations are taken from *Pacific M. Trucking Co.—Purchase—Valley M. Lines, Inc.*, 39 M. C. C. 441, 447:

> "Although, at times, a condition formerly was sometimes included in acquisition cases to the effect that service to be rendered should be 'auxiliary and supplementary' to the railroad's service, there has been no

indication in the reports that such condition was intended to prohibit rendition of all motor-carrier service directly for the shipping public under the operating rights in *addition to*, in *substitution for*, and in *lieu of*, the parent railroad's service, or to restrict the operation *solely* to one in combination with the railroad's operation; nor is it our understanding that it has been so construed by the carriers. In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon a motor-carrier operation in *addition to*, in *substitution for*, and in *lieu of*, the railroad's operation, as well as upon an operation *in combination* with the railroad. *Southwestern Transp. Co.—Purchase-Hill and Howe*, 37 M. C. C. 83, in which petition for reconsideration was denied by the Commission March 2, 1942.

ARGUMENT UNDER EXCEPTION 6

In support of the first portion of Exception No. 6, we submit that New Orleans and Addis, with respect to traffic moving between those points, properly may not be
666 said to be key points within the accepted definition of key points previously laid down by the Commission. At the outset it perhaps should be pointed out that Addis is a small town and in itself does not receive or forward any substantial amount of traffic. Merchandise originating or terminating at Addis is small in volume and it could not by any rule of reason sustain a box car operation. It is primarily, if not solely, a transfer point in the handling of less-than-carload freight originating at or destined to points beyond. It is true that a box car containing merchandise is operated six days per week by The Texas and Pacific Railway Company from New Orleans to Addis. However, there is considerable freight received at New Orleans too late to be moved in the box car the same day such freight is received. The preponderance of this late freight is Louisiana intrastate traffic but some of it is interstate business. So as to avoid delaying this late freight by 24 hours, as well as to permit the train to depart in time to properly perform all of its assigned duties, Transport should be permitted to move this freight daily except Sunday from New Orleans to Addis, leaving New Orleans several hours after departure of the box car in train service.

Transport holds unrestricted common carrier motor carrier rights in the handling of intrastate freight over the route and is obligated thereunder to render a daily service six days per week. The interstate freight may easily be carried in the same truck which transports the intrastate freight. Consequently, there will be no additional equipment used
667 nor extra help employed by Transport by its handling of this late interstate freight. Obviously, therefore, the service proposed by Transport from New Orleans to Addis, notwithstanding the box car operation, is definitely to the public's interest, as well as beneficial to Transport and its affiliate, The Texas and Pacific Railway Company. It follows that both the box car and truck operation is necessary from New Orleans to Addis to provide a service satisfactory to all concerned.

As to traffic moving in the reverse direction, that is, from Addis to New Orleans, there is not sufficient tonnage to load a box car at Addis daily, or for that matter less frequently within any degree of reason. O. D. T. General Order No. 1 is still in effect and it requires a minimum of 20,000 pounds per car. Even by holding shipments at Addis for the maximum period of 36 hours, there could not be accumulated tonnage in the amount of 20,000 pounds. Accordingly, a box car is not loaded daily at Addis for New Orleans. Transport could readily carry the interstate freight without additional equipment or help over and above that required in the transportation of intrastate freight from Addis to New Orleans. If Addis is set up as a key point it will not only seriously hamper Transport's operations but would deprive the public of a daily service.

In support of the second provision of Exception No. 6, we submit that Alexandria and Shreveport, with respect to traffic moving between those points, or through, or to or from more than one of said points, properly are not
668 key points within the meaning of that term as previously laid down by the Commission. No box car is operated, and none can be so operated, from Alexandria to Shreveport except on infrequent occasions because there simply isn't sufficient tonnage available at Alexandria. Even by holding shipments at Alexandria for a maximum period of 36 hours as permitted under O. D. T. General Order No. 1, there could not be sufficient tonnage accumulated to enable the minimum loading of 20,000 pounds per car. To give a picture of the true situation, there moved only two box cars of merchandise from Alexandria

to Shreveport during the entire month of June, 1946 and only three box cars of merchandise during the entire month of July, 1946. For the most part this merchandise was bulky freight which could not be moved by Transport. Accordingly for all practical purposes the less-carload freight from Alexandria to Shreveport is moved by Transport but in such cases Transport in the handling of interstate shipments, has in every instance complied with its certificated requirement of a prior or a subsequent rail haul under a through bill of lading. Transport holds unrestricted intrastate common carrier motor carrier rights between Alexandria and Shreveport and thereunder is obligated to and does render a daily service six days per week in each direction between Alexandria and Shreveport. Such interstate freight as moves from Alexandria to Shreveport can be transported in the same equipment and by the same employees as handle intrastate freight.

669 Concerning movement in the reverse direction, that is, from Shreveport to Alexandria, a box car containing merchandise is regularly operated but the train schedule is such that if this means of transportation is solely relied upon, the interstate freight in many cases will suffer a delay of from 12 to 24 hours. The train from Shreveport for Alexandria departs Shreveport in the morning. So as to be moved in this train the merchandise must be tendered to The Texas and Pacific Ry. Co. at Shreveport the day before. As previously pointed out, Transport operates daily service six days per week from Shreveport to Alexandria, primarily in the handling of intrastate freight which freight tendered at Shreveport, even late in the afternoon of any week day, is moved by Transport that night and delivered in Alexandria early the next morning. This gives intrastate business an advantage in service over interstate traffic. There is some interstate traffic, in the nature of ex pool car shipments, reforwarded from Shreveport to Alexandria and if this business must be carried only in a box car it will experience an undue delay as compared with intrastate freight from and to the same points. Transport can move interstate business in the same equipment and by use of the same personnel as handle intrastate freight. It is plain that the best interests of the public, The Texas and Pacific Ry. Co. and Transport will be served by the operation of Transport and from Shreveport to Alexandria as an auxiliary or supplemental service to the box car operation.

670 CONCLUSION

Transport believes that the Commission does not desire to cast aside Transport's operations perfected over a long period of years of actual practice, to the advantage and satisfaction of all concerned and substitute therefor some requirements that would only serve to disturb the present efficient and beneficial *modus operendi* that has emerged from the welter of practical experience.

This entire subject has been extensively treated in Transport's various petitions to the Commission, particularly that of May 20, 1943. Further a most thorough and extensive discussion thereof will be found in a Petition for Reconsideration and Oral Argument filed by the Rock Island Motor Transit Company in No. MC-F-445 on or about May 27, 1946, much of which has a relevant bearing upon the issues with which Transport is here concerned. A careful consideration of these documents is therefore urged upon the Commission in arriving at its decision in this case. The Commission is here afforded a great opportunity to hand down a constructive pronouncement and to assure to the public the continuation of the improved service that flows from fully coördinated truck-rail transportation, and with it preserving the right of Transport to continue its operation as a common carrier motor carrier under its rights purchased, in its own name and under the same practices as its predecessors in interest.

671 PRAYER

Wherefore, Transport prays that the Commission set aside, cancel and hold for naught the report proposed by the Examiners Waters and Boss save and except that portion of the proposed report dealing with MC-50544, Sub. 11.

In the alternative, Transport prays the Commission that it grant Transport's exceptions Nos. 5 and 6 by eliminating the Examiner's recommended Condition or Restriction No. 1, in connection with Certificates purchased by Transport and by modifying said Conditions or Restriction No. 3B so as to permit Transport to carry traffic between New Orleans and Addis, Louisiana and between Alexandria and Shreveport, Louisiana. While Transport here has not specifically excepted to the other key point provisions set forth in said Condition or Restriction No. 3B—due to the possibility of changing conditions—it may be that some modifications in these other key point provisions may be neces-

sary in the future, and in that event Transport respectfully prays the Commission that it be allowed to appeal to the Commission for appropriate relief.

As a further alternative and subject to the foregoing if the Commission does not agree with Transport, Transport prays the Commission for a reconsideration of the proposed report by Examiners Waters and Boss and that rehearing be granted with a full and adequate statement of the issues it desires to have developed so that
672 all interested parties will know and be prepared to meet the precise issues involved.

Oral argument before full Commission is requested.

Respectfully submited,

J. T. Suggs,
D. L. Case,
J. W. Riley,
Robt. Thompson,
W. O. Reed,
Attorneys for The Texas and Pacific Motor Transport Company.

922 Texas and Pacific Bldg.,
Dallas 2, Texas.
August 22, 1946.

Certificate of Service

I hereby certify that I have this day served the foregoing petition upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each of them.

.....
W. O. Reed.

Dallas, Texas.
August 22, 1946.

674 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 21st day of February, A. D. 1944.

No. MC 50544 (Sub No. 5)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-ABILENE, TEXAS

No. MC 50544 (Sub No. 6)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ABILENE-BIG SPRING, TEXAS

No. MC 50544 (Sub No. 8)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-WILLS POINT, TEXAS-
GLADEWATER, TEXAS-SHREVEPORT, LOUISIANA

No. MC 50544 (Sub No. 12)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—TEXARKANA, TEXAS—ARKANSAS—FORT WORTH, TEXAS

No. MC 50544 (Sub No. 22)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS-FORT WORTH, TEXAS
Dallas, Texas

Upon consideration of the records in the above-entitled proceedings; and good cause appearing:

It is ordered, That the said proceedings be, and they are hereby, reopened for further hearing at a time and place to be hereafter fixed, solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to The Texas and Pacific Motor Transport Company.

By the Commission, division 5.

(SEAL)

W. P. BARTEL,
Secretary.

675

Before the
Interstate Commerce Commission

Docket No. MC-50544*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION

Petition for Reconsideration by Entire Commission and for Vacation of Report and Order of Division 5 on Further Consideration of January 22, 1948, and for Oral Argument.

Due Date: April 11, 1948

679 *To the Interstate Commerce Commission:*

Comes Now The Texas and Pacific Motor Transport Company, applicant in the applications numbered and entitled as above, hereinafter designated as petitioner, and for the reasons hereinafter assigned prays that the Commission reopen said proceedings for reconsideration by the entire Commission, and that upon such reconsideration the Commission revoke, vacate, set aside and hold for naught the report and order of Division 5 on further hearing of January 22, 1948, and that thereafter no further proceedings in these cases be had other than with respect to Sub-No. 11. Petitioner further requests oral argument before the entire Commission provided the foregoing petition is not granted without argument.

680 FUNCTIONAL DEVELOPMENT OF PETITIONERS' OPERATIONS

Before undertaking a discussion of the issues upon which this petition is predicated, a survey of the operations and developments of petitioner since its organization, it is believed, will be helpful. As stated in *Texas & P. Motor Transport Company—Purchase—Johnson*, 5 M. C. C. 89, 90, petitioner was incorporated under the laws of Delaware on June 21, 1929, and beginning in September of that year it rendered pick-up and delivery service on less-than-carload freight for The Texas and Pacific Railway Company, its proprietary owner, hereinafter referred to as Railway. Since September, 1935, petitioner additionally has conducted a common carrier truck operation. As stated in said report, such common carrier operations were conduct-

* Includes sub-numbers listed in Appendix A to the report of Division 5 on further hearing of January 22, 1948.

ed at that time (1937) between Monahans, Texas, and Lovington, N. M., between Marshall, Texas, and Shreveport, La., and between the latter point and Cypress, La.

Thereafter, in pursuance of the respective certificates issued to it in the title proceeding and in the sub-numbers thereto listed in Appendix A to the aforesaid report of Division 5 on further consideration (mimeographed), hereinafter referred to as the 1948 report, petitioner has from time to time extended the scope of its operations so that at present they include almost the entire line of Railway.

681 For the most part, such certificates were issued to petitioner under Section 207,* but three of these certificates (Sub-Nos. 5, 6 and 8) were acquired by purchase. See *Texas & P. Motor Transport Co.— Purchase—Johnson, supra*, decided May 20, 1937, and *Texas & P. Motor Transport Co.—Purchase—Southern Transp.*, 5 M. C. C. 653, decided July 6, 1938, hereinafter respectively denominated the Johnson Purchase and the Southern Purchase. A review at this point of the reports under which petitioner acquired these purchased certificates will be helpful in the further presentation of this petition.

In the Johnson Purchase, by applications filed September 12, 1936, as stated by Division 5, petitioner sought authority under section 213, now section 5 of Part I, "to purchase portions of the *operating rights* of (1) W. A. Johnson, doing business as Johnson Motor Lines, and (2) Fort Worth Warehouse & Storage Company, Inc." (page 89). "Johnson and the Warehouse each have a 'grandfather' application pending before us and applicant has applied for authority to continue certain of its *common-carrier operations.*" (Emphasis supplied.) "Applicant would acquire continuous operating rights between Dallas and Big Spring if the applications are approved. * * * The portion of the route between Dallas and Abilene * * * would be purchased from the Warehouse for $25,000, and the portion between Abilene and Big Spring * * * would be acquired from Johnson for $12,000" (page 90). And from page 92 we reproduce the following:

"* * * Evidence as to how these highway and rail-

682 way operations may be coördinated is similar in character and leads to the same conclusions reached in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M. C. C. 101, 5 M. C. C. 9 and 49, wherein

* Statutory references herein, unless otherwise stated, are to Parts I and II of the Interstate Commerce Act (including the former Motor Carrier Act, 1935, now Part II, I. C. A.).

we approved acquisition of a truck line by a railroad subsidiary. We there indicated the character and scope of the approved and disapproved operations and among other things, conditioned our authorization to exclude the privilege of rendering service from or to, or the interchange of traffic at, any point not a station on the railroad. That condition was imposed to protect the traffic rights of competing common carriers at points not previously served by the railroad, and for the same reason a similar condition will be imposed herein."

In the Southern Purchase, as stated in the report of Division 5, by application filed July 17, 1937, petitioner sought authority under section 213, to purchase certain *operating rights* of Southern Transportation Company for $40,000 (page 653). "Southern operates pursuant to a pending 'grandfather' application as a motor-vehicle common carrier of property between Dallas and Shreveport, La., via Tyler, generally paralleling the railway between Dallas and Wills Point, 48 miles, and between Gladewater and Shreveport, 79 miles. * * * In the instant transaction applicant proposes to acquire the operating rights of Southern over the previously mentioned portions of the latter's line which parallel the railway, viz., between Dallas and Wills Point, and between Gladewater and Shreveport" (page 654). The ensuing comments of Division 5 are abstracted from page 655-6:

"The proposed purchase is another step in the general plan of applicant and the railway toward
683 the development of coördinated truck-and-rail service on merchandise freight in the entire territory served by the railway. The first step in that direction has been accomplished through authorization granted in *Texas & P. Motor Transport Co.—Purchase—Johnson, supra*, as a result of which such service has been inaugurated from Dallas west to Big Spring with beneficial results. The authority herein sought will provide means for in part extending the same service eastward from Dallas to Shreveport. The proposed plan of operation will be identical to that now in effect between Dallas and Big Spring and contemplates the movement of merchandise cars to set-out or concentration points along the line of the railway, from which distribution will be made to the smaller intermediate points by truck. Thereby time in transit can be substantially lessened, schedules of local trains presently

[at present?] handling the traffic can be expedited and railroad economies inherent in coordinated service can be fully realized through elimination of numerous lightly loaded cars and unnecessary time-consuming and expensive stops of both local and through trains. Details concerning these and many other resulting advantages are recited of record. There would be no undue restraint of competition as East Texas operates over both segments of the route to be acquired, and there are several intersecting and parital-route operators serving, collectively, nearly all of the principal points on each segment."

Thereupon Division 5 observed (page 657) that the record is convincing that the operating rights considered will be of great value to applicant and the railway towards effectuation of their announced plan to establish coördinated rail-motor service over the entire line of the
684 railway; and considering the many improvements in service and opportunities for economy inherent in coördinated transportation service "the price proposed to be paid does not appear excessive." In conclusion, the Joint Board, whose recommended report and order was incorporated in the report of Division 5, made its finding "that purchase by the Texas and Pacific Motor Transport Company of the previously described operating rights of Southern Transportation Company, including the right to operate pending determination of the 'grandfather' application of the latter and the right to any certificate, with respect to such rights, which hereunder may be issued as result of such application, * * * will promote the public interest by enabling the Texas and Pacific Railway Company to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

No exceptions were filed to the Joint Board's recommended report and order in either the Johnson Purchase or the Southern Purchase.

From the foregoing it will be observed that in 1937 and 1938, with the consent and approval of this Commission as provided by law, petitioner acquired by purchase at an aggregate outlay of $77,000 the *common carrier operating rights* then held by the respective vendors under certificates of public convenience and necessity (not under contract carrier permits) extending along the Railway between Shreveport, La., and Big Spring, Texas, except for a segment of the line between Gladewater and Wills

685 Point, Texas. These certificates of necessity were held by the vendors under pending "grandfather" applications as motor-vehicle common carriers of property. True, as stated by Division 5 in its 1948 report, all of the certificates issued to petitioner, including these purchased certificates, were subject to such further limitations or restrictions. (Conditions 5 and 5A) as the Commission in the future may find it necessary to impose in order to restrict the operations of petitioner "to service which is auxiliary to, or supplemental of, rail service." As to this qualification of the Commission's certificates, we shall have more to say anon.

Each of the certificates issued to petitioner herein is subject to two or more of the conditions listed in Appendix B to the 1948 report, but the limitations incorporated in Conditions 5 and 5A, which are largely identical, are the only ones which are common to all of petitioner's certificates. Only by Conditions 3 and 3A did the Commission in terms limit petitioner to the transportation of shipments received from or delivered to the Railway under a through bill of lading covering, in addition to movement by petitioner, a prior or subsequent movement by rail. As disclosed in the 1948 report, the only certificates which are subject to either of these two conditions are sub-numbers 1, 3, 4, 9 and 19, and none of the purchased certificates (Sub-numbers 5, 6 and 8) was subjected to either.

In this connection, the distinction betweenn certificates issued under section 207 and acquisitions under section
686 5 (formerly section 213) should be borne in mind. Thus, after citing *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, and *Great Northern Ry. Co. Extension—Hobson—Lewistown*, 19 M. C. C. 745, the Commission commented as follows in *Pacific Motor Trucking Co.—Control—Pacific Truck Exp.*, 35 M. C. C. 353, at pages 358-59:

> "The situations presented in the two cases last cited differ from that here presented. The applications in those cases were filed under section 207(a) of the act for a certificate of public convenience and necessity authorizing institution of a new operation, wherein the controlling issue is whether the public needs the proposed service. The instant application, on the other hand, was filed under section 213 by a motor-carrier subsidiary of a railroad to acquire control of an existing motor carrier, which at present is in competition with the railroad; and the question presented is

whether the authority sought would enable the railroad to use such motor-carrier service to public advantage in its operations and would not unduly restrain competition."

What, then, was the Commission's announced interpretation of what is meant by "service which is auxiliary to, or supplemental of, rail service" at the time the common carrier certificates were acquired by petitioner in the Johnson Purchase and the Southern Purchase? These purchases were consummated shortly after the rendition of the supplemental report of Division 5 in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 5 M. C. C. 9, on March 6, 1937. As stated on page 10 of said report, the Division had remarked in its initial report therein that

687 "we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroad free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations." Upon further consideration, however, the Division in its said supplemental report authorized the acquisition by Pennsylvania Truck Lines, Inc., of control of the Barker Motor Freight, Inc., subject in part to the conditions that operations under the authority granted be only between the points and over the routes described in the appendix to the report, and that the authority so granted be not construed to include the right of rendering service from and to, or the *interchanging* of traffic at, any point other than a station of the Pennsylvania Railroad Company. (Emphasis supplied.) And in concluding its report the Division added:

"These findings are not to be understood as restricting the right of the Pennsylvania to use motor facilities in the manner and to the extent contemplated by part I of the Interstate Commerce Act, or as prohibiting service from or to, or the interchange of traffic at, points not on the Pennsylvania's own line, but on a rail route respecting which it has trackage or similar rights, provided the later include the privilege of serving intermediate stations."

Such was the Commission's own interpretation of the condition relating to service auxiliary to, or supplemental of, rail service at the time petitioner acquired its certificated common carrier rights through the Johnson

688 Purchase and the Southern Purchase. Since then, however, the meaning of that condition has been still further delineated. We quote from the report of Division

4 in *Pacific M. Trucking Co.—Purchase—Valley M. Lines, Inc.*, 39 M. C. C. 431, 446-47.

"One question presented for our determination here is what restrictions, if any, should be imposed on the unified operating rights of veandee if this purchase is to be approved. Under the proviso of section 5 (2) (b), in cases where a railroad or a railroad subsidiary or affiliate proposes to acquire control of motor-carrier operations, we are only authorized to approve the transaction if we are able to find, among other things, that it will enable the railroad involved 'to use service by motor vehicle to public advantage in its operations and that it will not unduly restrain competition.' In *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 5 M. C. C. 9, herein called the *Barker case*, it was found that such a transaction could be approved under that proviso when the evidence established that the motor-carrier operations proposed to be acquired could and would be used in service 'auxiliary or supplementary to train service' of the affiliated railroad. That principle has since been followed in appraising the evidence adduced to support the statutory finding in rail-motor acquisition cases. However, the meaning of the phrase 'auxiliary and supplementary to train service,' as sometimes formerly used in acquisition cases has never been defined as to precisely what limitation of the operating authority was intended by those words. Evidence showing how such service could and would be rendered in various ways, if the transaction were approved, has been accepted and found sufficient to support the required statutory finding. Usually such evidence has related to motor-carrier operations in
689 combination and in coordination with the railroad's operations, resulting in expedited service, and saving for the railroad, but no condition has heretofore been imposed in acquisition cases limiting the transportation authorized *solely* to transportation in combination with the railroad of the railroad's freight, or *preventing* the motor-carrier operation and service being made directly available to the shipping public apart from and in addition to the railroad's service. The only definite restriction on the operating authority which was imposed in the *Barker case* and later cases has been designed to confine the motor-carrier operations acquired to the territory of the railroad through limiting the rights so as to authorize service only at stations on the railroad. Although, at times, a condi-

tion formerly was sometimes included in acquisition cases to the effect that service to be rendered should be 'auxiliary and supplementary' to the railroad's service, there has been no indication in the reports that such condition was intended to prohibit rendition of all motor-carrier service directly for the shipping public under the operating rights in *addition to*, in *substitution for*, and in *lieu of*, the parent railroad's service, or to restrict the operation *solely* to one in combination with the railroad's operation; nor is it our understanding that it has been so construed by the carriers. In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon a motor-carrier operation in *addition to*, in *substitution* for, and in *lieu of*, the railroad's operation, as well as upon an operation *in combination* with the railroad. *Southwestern Transp. Co.—Purchase—Hill and Howe*, 37 M. C. C. 83, in which petition for reconsideration was denied by the Commission March 2, 1942. (Emphasis supplied.)

690 Implementing and giving practical effect to the common carrier certificated authority issued to it as above, from the small beginnings mentioned in the Commission's report in the Johnson Purchase, *supra*, petitioner and Railway little by little began to build up an efficient, workable and integrated rail-truck service which, as previously stated, now extends almost completely throughout the length and breadth of the territory served by Railway, although limited, with a few minor authorized exceptions, to service to or from stations on the line of Railway. Generally speaking, this coordinated rail-truck service has been handled on both rail billing and motor transport billing, and so far as practicable in rail service, or partly by highway and partly by substitute rail service, such practice being in conformity with that portion of the declaration of policy set forth in the Motor Carrier Act, 1935, relating to the coordination of transportation by motor carriers and other carriers. Certainly, unless a shipper specifically designates a desire for a particular mode of transportation, the only interest he has in the transportation of a shipment from Dan to Beersheba, say, is that it be delivered at destination safely and expeditiously, and at the lowest reasonable cost of service. In short, the shipper is concerned primarily with results, and not with the means by which the transportation is accomplished.

Nevertheless, in Ex Parte 129, *Substituted Freight Service,* the Commission on its own motion inaugurated an investigation into the lawfulness, in part, of the substitution of motor-vehicle service for rail or water service or of rail or water service for motor-vehicle service. By its report therein of July 25, 1939, 232 I. C. C. 683, the Commission reviewed the practices of the carriers in that regard and in conclusion expressed its disapproval thereof in certain particulars. In the course of its opinion, however, the publication of a rule in the directory or individual rail tariffs authorizing, unless otherwise directed by the shipper, the transportation of less-than-carload shipments in all-rail or joint motor-rail service at the option of the origin or destination carrier was suggested.

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Following the foregoing decision, petitioner filed with the Commission a petition dated August 7, 1941, wherein it requested the issuance of orders or instructions defining its rights under certain certificates held by it, or for alternative relief. This eventuated in a hearing and report in *Texas & Pacific M. Transport Co. Com. Car. Application,* 41 M. C. C. 721, decided January 21, 1943. In that case the Commission (Division 5) made the following finding (page 727):

> "We find that, to the extent petitioner holds certificates limiting the motor-vehicle service authorized to that which is auxiliary to or supplemental of rail service, it is without authority to perform service under all-motor local and all-motor joint rates with connecting motor carriers or to substitute rail service for motor service and, accordingly, may not properly be a party to tariffs containing all-motor rates or to tariffs providing for the substitution of rail for motor service.
>
> "No affirmative order will be entered at this time, but petitioner will be expected, within a reasonable time after the service of this report, to bring its service and tariffs in line with the foregoing finding."

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Realizing the devasting effect the foregoing decision would have upon the integrated rail-truck service they had developed over the years, on or about May 20, 1943, petitioner and Railway jointly filed in these proceedings a petition "For Reconsideration and Oral Argument: For Modification of Supplement No. 5 to Tariff Circular No 20 and Specified Special Permission or for Further Hearing." In said petition the scope of the several common carrier certificates that had been issued to petitioner was reviewed

in considerable detail, and certain relief was requested as outlined in the caption of the petition, including a plea for oral argument and an alternative request for further hearing. The petition was denied by the entire Commission on February 14, 1944, but on the same date Division 5 entered an order reopening the cases for further hearing.

Shortly thereafter, about May, 1944, Railway was authorized by the Commission to become a party to motor carrier tariffs, pursuant to which Railway proceeded to make itself a party to such tariffs to the extent at that time considered appropriate. Accordingly, on August 5, 1944, petitioner again petitioned the Commission, pointing out that Railway had been granted what was principally sought in the petition of May 20, 1943, that is, permission for Rail-
693 way to become a party to certain motor carrier tariffs, and asked that no further hearings be held, inasmuch as the prior request for further hearing was merely in the alternative in the event the other relief sought was denied. The latter petition was denied by order dated August 30, 1944, at which time the proceedings were set for hearing at Dallas on October 17, 1944.

The Dallas Hearing of October 17, 1944

At the opening of such hearing, since Railway had been authorized to participate in the motor carrier tariffs, it was announced that, except as to Sub-No. 11, petitioner sought no change in or removal of any of the conditions in its certificates, but desired only that it be allowed to continue to operate as it was doing at the time of the hearing. Thereupon, following an inquiry addressed to the Examiner as to whether, since petitioner desired no change in its certificates, the Commission contemplated making any change thereof, and his response that, so far as he was able to advise, no change was contemplated except such as might develop from the evidence produced at the hearing, counsel for petitioner (R. 88) stated that all it desired was to be left as it was and requested permission to abandon the hearing. The Examiner, however, suggested that it would be sufficient for petitioner to explain its present operations and then, if the parties had any objections, that would clarify the matter. It was thereupon stated that a wit-
694 ness was present who could explain the operations of petitioner, but that otherwise petitioner had made no preparation for the hearing (R. 88-89).

The witness (T. E. Huffman) was produced and sworn at this juncture. Before his interrogation was begun, how-

ever, counsel for one of the intervening motor carriers asked for information as to the purpose of his testimony, explaining that his clients had no protest to offer in view of the statement for petitioner that it was seeking no modification or amendment of its present operating authority (R. 90-93). Other intervenors thereupon announced their joinder in the motion to dismiss (R. 93-96), whereupon counsel for petitioner requested permission to withdraw witness Huffman, stating that petitioner offered no evidence at the hearing (R. 98). Counsel for the respective intervenors* thereupon announced they had no evidence to offer (R. 98-99).

695 The Examiner, however, declined to permit the withdrawal of Mr. Huffman as a witness (R. 99), in which connection counsel for petitioner stated he wanted the record to be clear that Mr. Huffman was not offered as a witness, although he was available if the Examiner should desire to call him (R. 99-100). This was followed by the announcement of counsel for petitioner that he had no questions to ask the witness (R. 100) and by counsel for certain intervenors that they likewise had no questions to ask, whereupon in view of the condition of the record counsel for one of the intervenors objected to any testimony going into the record, which objection was overruled by the Examiner (R. 101). The same objection was made by counsel for petitioner and overruled by the Examiner (R. 103), but on inquiry the Examiner agreed that all parties would be given a running objection to the testimony to be given by the witness.

Witness Huffman was there thereupon interrogated at some length by the Examiner (R. 103-37, 139-42), with cross-examination by counsel for an intervenor on a limited issue (R. 137-139). At the conclusion of the testimony,

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* Frank C. Brooks, representing Dallas-Fort Worth Motor Freight Lines; East Texas Motor Freight Lines; English Freight Company; Gillette Motor Transport, Inc.; Herrin Transportation Company; Houston & North Texas Motor Freight Lines, Inc.; and Northeast Texas Motor Lines, Inc.

Frank H. Rawlings, representing H. E. English d.b.a. Red Ball Motor Freight Lines.

Cecil A. Morgan, representing Braswell Motor Freight Lines.

Ed P. Byars, representing Fort Worth Freight Bureau and Fort Worth Chamber of Commerce.

Ralph W. Currie, representing Dallas Chamber of Commerce.

Joe T. Steadham, representing the Brotherhood of Railroad Firemen.

C. M. Mulholland, representing Railway Labor Executives Association.

Robert J. McBride, representing American Trucking Associations, Inc.

counsel for petitioner renewed his objections to the evidence, as previously made, and in the alternative, and only in the event that the Commission should conclude to make any change in petitioner's certificates as a result of the hearing, requested that petitioner be accorded "additional hearings for the purpose of introducing shipper witnesses and at different places along the routes of these certificates." Counsel additional announced (R. 143-44) that petitioner should have advance notice of any changes which the Commission might propose to make in its certificates to enable it to properly conduct a hearing in connection with any changes that might be contemplated, it being felt that petitioner is legally entitled to a more sufficient notice than that afforded by the order of Division 5 on August 30, 1944. Upon inquiry of the Examiner as to whether petitioner relied upon such notice or made any effort to determine the purpose of the hearing (R. 144), counsel stated that petitioner had requested that no hearings be held, which request was denied, and that petitioner relied on the notice as far as it goes, but did not rely on it as to the production of evidence, etc., because it was not known what the Commission wanted.

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Counsel for the shipping interest of Dallas thereupon expressed entire satisfaction with the present operations of petitioner and stated (R. 145) that they should be given notice in advance of any hearings on any changes which the Commission may contemplate in the operations of petitioner, which statement was concurred in on behalf of the shipping interests of Fort Worth. Other intervenors thereupon expressed their objection to any change in the status of petitioner's operations being made without ample notice in advance and an opportunity to be heard on the issue (R. 146-147). In short, it was the view of all concerned that there should be no change made in the status quo of petitioner's operations without full notice to all concerned of what changes are contemplated and without full opportunity being afforded for anyone interested or affected to be heard thereon.

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In due course, the Examiner's proposed report was prepared and served, exceptions to which were filed by petitioner on or about August 26, 1946, and thereafter Division 5 handed down its report and order of January 22, 1948, to which this petition is addressed.

PETITIONER'S CERTIFICATES CONNOTE COMMON CARRIER OPERATIONS

We here pass to a consideration of the status of petitioner as a common carrier rather than as exclusively a contract carrier. The differences between the two operations are well defined. Thus, in 13 C. J. S. 26, under the topic of *Carriers*, it is said that: "To constitute a carrier a common carrier, he must hold himself out as engaged in public service for all persons indifferently, so that he would be liable for refusal, without excuse, to carry for all who might apply." Conversely, at page 31 of the same treatise we find a private carrier is thus defined: "A private carrier is one who undertakes by special agreement in a particular instance to transport property without being bound to serve every person who may apply." There are other points of difference, of course, such as the publication of rate schedules and liability for loss or damage, but the foregoing definitions reflect the fundamental distinctions recognized by the courts.

698 Again, in 9 *Am. Jur.* 435, we are told that: "Private carriers are distinguished from common carriers in respect of (1) the obligation to carry and (2) the liability for loss or injury." And on pages 437-38 it is pointed out that, where the right to engage in the transportation business is dependent upon a grant from the State, it is competent for the State, in making such grant, to impose the condition that the grantee shall exercise such privilege in the capacity of a common carrier. The latter is peculiarly significant in respect of the issuance to petitioner of common carrier certificates rather than of section 209 contract carrier permits. The terms "common carrier by motor vehicle" and "contract carrier by motor vehicle" were respectively defined in subdivisions (14) and (15) of section 203 (a).

Turning to specific court decisions, we find that in *United States* v. *Louisiana & P. R. Co.*, 234 U. S. 1, it was held that the right of the public to use the facilities of a railroad and to demand service of it, rather than the extent of its business, is the criterion by which to determine whether or not it is a common carrier. To similar effect is *Koppers Connecticut Coke Co.* v. *James McWilliams Blue Line*, 89 F. (2d) 865, certiorari denied, 302 U. S. 706. The distinction between a common carrier and a private carrier is said in the latter citation to be that the former holds himself out in common to all persons who choose to employ

him, while the latter agrees in special cases to carry for hire. Where an entire ship is chartered it does not
699 meet the test of being a common carrier; see *The Oakley C. Curtis*, 4 F. (2d) 979, certiorari denied, 267 U. S. 500. So, if petitioner is confined in its operations to handling traffic of Railway only, as contemplated by Division 5, it could not do so as a common carrier. Nevertheless, a common carrier may engage in private or contract carrier operations along with its common carrier operations; *Gracie* v. *Palmer*, 21 U. S. 605. Likewise, tap lines may transport the property of their proprietary owners as common carriers along with non-proprietary traffic; see *United States* v. *Louisiana & P. R. Co., supra; Liverpool & G. W. Steam Co.* v. *Phenix I. & S. Co.*, 129 U. S. 397.

This leads us to an inquiry as to the corporate powers of petitioner. By reference to its Articles of Incorporation we find that, among the varied activities in which it is authorized to engage, besides conducting the business of a common carrier by any means whatsoever, and partly by one means of transportation and partly by another, and/or by arrangement or contract with other common carriers, it may lease, contract with and otherwise deal in truck, bus, stage or other transportation lines and systems, as will be noted from the following purpose paragraphs we have lifted from that document:

"(a) To engage in and conduct the business of a common carrier for the forwarding and/or transportation for hire of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description, by any means whatsoever, and partly by one means of transportation and partly by
700 another means of transportation, and/or by arrangement or contract with other persons, business concerns, corporations or common carriers.

"(b) To establish and maintain a line of stages, motor coaches and motor trucks to be operated as common carriers; to own, maintain, conduct, operate, manage, buy, sell, lease, contract with and otherwise deal in truck, bus, stage or other transportation lines and systems for the forwarding, carrying and transportation of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description; to procure, own, operate under, buy, sell, lease, mortgage or otherwise deal with the franchises,

licenses, grants and certificates for the operation, control, conduct and/or management of bus, truck, stage or other transportation lines."

It thus is seen that under its authorized corporate powers petitioner is not restricted solely to the handling of traffic in its own equipment, whether as a common carrier or otherwise, but is empowered to engage the services of others in the conduct of its business. It is privileged to act as a common carrier independently of its proprietary ownership, and indeed may lawfully enlist the services of the latter as an agency in its common carrier business.

Nor may it rightfully be urged that as a general proposition petitioner is precluded from operating as a common carrier under the certificates it has acquired. Some of these certificates, as we have seen, were founded upon so-called "grandfather" common carrier rights, as defined by the statute, and later acquired by petitioner
701 through purchase with the sanction of the Commission. Other certificates held by petitioner were issued to it as a common carrier in accordance with the provisions of section 207, which provides for the issuance of a certificate of public convenience and necessity "to any qualified applicant therefor" who is found to meet the requirements therein laid down. On the contrary, section 209 directs that the Commission shall issue only a contract carrier permit to any qualified applicant for authority to engage in the business of a contract carrier by motor vehicle.

It therefore follows, we maintain, that, had it been the intent of the Commission to deny petitioner the right to engage in independent common carrier operations at the time it was permitted to acquire its purchased certificates or at the time its section 207 certificates were issued, the Commission should have issued to petitioner contract carrier permits under section 209. The fact that petitioner received common carrier certificates is in itself a manifestation that the Commission originally intended to authorize petitioner to conduct its operations as a common carrier in its own right. Nor do we overlook the limitations incorporated in section 210. Nowhere in the statute has the Congress limited a motor carrier affiliate of a railroad to the handling of shipments having a prior or subsequent rail haul, and if the Commission continues to question the present operations of petitioner there should be some means whereby petitioner may be authorized to perform

702 contract carrier service for Railway without curtailing its current operations under its common carrier certificates, which dual operations are not necessarily conflicting. See *Willett Co. Extension*, 46 M. C. C. 35, 43; *Alto Trucking Co., Inc., Extension*, 44 M. C. C. 755, 763. Under their existing arrangements, petitioner and Railway are enabled to compete more effectively with other transportation agencies in the handling of less-than-carload traffic than if required to operate solely on rail billing. Further, being under a common management and control, petitioner and Railway are not in competition as between themselves and are in a position to adjust their respective operations to the best advantage of each. The idea of petitioner and Railway being in competition *inter sese* is but an absurdity. Competition and coordination are contradictory terms.

Condition 3 Does Not Preclude Motor Transportation Billing

As disclosed in Appendix B to the 1948 report, five of petitioner's certificates (Sub Nos. 1, 3, 4, 9 and 19) are subject to Conditions 3 and 3A, the latter being largely identical with the former. So far as here material, these conditions provide that shipments transported by petitioner shall be limited to those which it receives from or delivers to Railway under a through bill of lading covering, in addition to movement by petitioner, a prior or subsequent movement by rail. Even though Condition 1, relating to service auxiliary to or supplemental of rail service,
703 was imposed along with these other conditions, it does not follow that petitioner is precluded from issuing bills of lading covering shipments which it may originate, nor, in view of Railway's authorized participation in motor carrier tariffs, is petitioner precluded from performing auxiliary service in connection with shipments interchanged by Railway with a motor carrier.

For example, petitioner would fully comply with Condition 3 by issuing a bill of lading on a shipment originated by it and thereupon delivering same to Railway for further transportation, such service obviously being auxiliary to or supplemental of the rail service in connection therewith. And the same would likewise be true in respect of a shipment moving on motor carrier billing and received by petitioner from Railway for further transportation.

COMMISSION NOT EMPOWERED UNDER CONDITION 5 RESERVATIONS TO REVOKE OR RESCIND COMMON CARRIER RIGHTS ONCE CONFERRED

Section 212(a) provides that certificates, permits and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as therein provided. So far as here material, the statute further provides that any such certificate permit or license, upon complaint or on the Commission's own initiative, after notice and hearing may be suspended, changed or revoker, in whole or in part, for willful failure to comply with any provision of part II, or with any lawful
704 order, rule or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit or license. Section 5, as we have seen, *inter alia* authorizes one carrier, or a group of carriers jointly, subject to the Commission's approval, to purchase, lease or contract to operate the properties, or any part thereof, of another.

The Commission has itself heretofore had occasion to pass upon the scope and meaning of the aforesaid section 212(a). See *Smith Bros. Revocation of Certificate*, 33 M. C. C. 465, 472, reading in part thus:

> "In our opinion, the language of the foregoing section is clear and definite and unmistakably shows that Congress intended that a certificate, once effective, may be terminated by us only on the conditions, and according to the procedure, therein specifically provided. We may issue decision upon decision, and order upon order, on an application for a certificate so long as sufficient reason therefor appears and until all controversy is determined, but once a certificate, duly and regularly issued, becomes effective, our authority to terminate it is expressly marked off and limited. All the antecedent decisions and orders are essentially procedural in character, and may be set aside, modified, or vacated, but the certificate marks the end of the proceeding, just as the entry of a final judgment or decree marks the end of a court proceeding. To hold that under section 208 (a) we have the power to include in certificates self-executing forfeiture terms, conditions, or limitations would make section 212 (a) merely surplusage and would wipe out the stability and certainty with respect to operating rights of common carriers by

motor vehicle required in the public interest and contemplated by the act.

705 "In expressing the views stated above, we do not desire to be understood as holding that a certificate obtained by fraud, or misrepresentation, or one issued in error by this Commission, may not be changed or revoked without proceeding under section 212(a). Here, there is no question of fraud, misrepresentation, or a certificate issued in error."

Likewise, in *Hudson Bros. Transportation Company, Inc., Common Carrier Application*, 46 M. C. C. 9, 19, there appears the following:

"We have proceeded cautiously in the issuance of certificates of public convenience and necessity under part II of the act and have attempted to afford all interested ample opportunity to present to us all relevant and material evidence prior to their issuance. The petitioners are competitors of Hudson. It may be presumed that they knew of its existence and knew of the existence of its predecessors. The time to have contested the operating authority provided for in the Hudson order of July 20, 1940, was before the issuance of the certificate. As was said in *Smith Bros. Revocation of Certificate, supra*, the issuance of the certificate marks the end of the proceeding and, upon the facts before us, we are without power to revoke it in whole or in part. In the circumstances, the petition will be denied. An appropriate order will be entered."

To like effect, see also *Manhattan Coach Lines, Inc., et al. v. Adirondack Transit Lines, Inc.*, 42 M. C. C. 123, 129.

Consequent upon full investigation and hearing the Commission issued to petitioner the several certificates of convenience and necessity listed by Division 5 in its

706 1948 report, besides authorizing the transfer to petitioner for a valuable consideration of the common carrier rights held by certain vendors from whom they were acquired by petitioner through purchase. There was no concealment or fraud attendant upon the issuance or transfer of these certificates to petitioner. Through the acquisition of such certificates, petitioner was authorized to conduct common carrier operations as they had been defined by the Commission at the time the certificates were obtained by petitioner. As we have hereinabove undertaken to demonstrate, in rendering common carrier service a carrier holds itself out to serve all comers indiscriminately, and may neither limit itself nor be limited to rendering

service to a single shipper or a designated group of shippers.

True, in its comments under Condition 1 in its 1948 report, Division 5 makes a labored effort to place a construction upon its respective reports in the Johnson Purchase and Southern Purchase to support its ensuing conclusion (Sheet 6) "that the purchases of the described operating rights were approved not for the purpose of permitting applicant to engage in motor operations independent of its proprietary railroad but solely to enable it to render a service auxiliary to or supplemental of rail service."

In reaching this conclusion, however, the Division has ignored various expressions of the Commission bearing upon the intended meaning and purport of the term "service auxiliary to or supplemental of rail service." As we have pointed out earlier in this document, at the time the acquisition of each of these purchased certificates was authorized there existed an interpretation of the meaning of the above phrase as employed in the so-called *Barker case*, cited in the Commission's report in the Johnson Purchase, where it was said that "there has been no indication in the reports that such condition was intended to prohibit rendition of all motor carrier service directly for the shipping public under the operating rights in addition to, in substitution for, and in lieu of the parent railroad's service, or to restrict the operation solely to one in combination with the railroad's operation; • • • In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon a motor-carrier operation in addition to, in substitution for, and in lieu of the railroad's operation, as well as upon an operation in combination with the railroad."

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Of similar import are various subsequent decisions of the Commission. For instance, in *Barnett Trucking Co. Common Carrier Application*, 41 M. C. C. 303, 306, which involved transportation performed for forwarding or carloading companies, after quoting the section 203 definition of a common carrier by motor vehicle, the Commission said: "We cannot with applicant's common carrier status, restrict its service to particular shippers, namely, forwarding or carloading companies." A like holding appears in *Globe Cartage Co., Inc., Common Carrier Application*, 41 M. C. C. 313, 322, following which the Commission observed that "to restrict the traffic which it may transport

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to shipments made by freight forwarders would, in effect and result, be a restriction of applicant's service to such forwarders." A somewhat similar holding was made in *Apex Warehouse Co. Contract Carrier Application*, 33 M. C. C. 186, citing *Bleich Common Carrier Application*, 27 M. C. C. 9.

Indeed, in issuing to petitioner two of its section 207 certificates, the Commission explicitly rejected the idea that its contemplated services would be those of a contract carrier. Thus, in its original report dealing with Sub-No. 1, 10 M. C. C. 525, the Commission said at pages 528-29:

> "Although applicant considers its operations to be those of a common carrier, it asks that it be granted a permit if we should find its operations to be those of a contract carrier. Apparently the contractual relations between applicant and the railway only cover divisions of their joint rates and payments by applicant for its use of the railway's facilities. The railway receives 72 per cent of the through rates and 90 per cent of applicant's net income from operations. However, while applicant's operations are limited to the transportation of merchandise from and to stations on the railway, its holding out to the public, at least in respect of the kind of service it offers, is as broad as that of the railway itself. It publishes tariffs and may issue its own bills of lading. Although it may be regarded generally as an instrumentality of the railway, furnishing improved and supplementary service, we
> 709 conclude that its status under the act is that of a common carrier by motor vehicle."

Likewise, in discussing petitioner's application in the title case, 12 M. C. C. 37, relating to operations between Monahans, Texas, and Lovington, N. M., the Commission expressed itself as follows on page 39:

> "* * * Applicant asks that its application be treated as one for a permit rather than a certificate, if it be found that it is a contract carrier by reason of its relations with the Texas and Pacific Railway Company and the Texas-New Mexico. Shipments handled by applicant move under rates published in common carrier tariffs to which it is a party, and we conclude that it is a common carrier and that a certificate is the form of authority required."

And from *Vermont Transit Co., Inc., Contract Carrier Application*, 23 M. C. C. 470, 471-72, we abstract the following paragraph:

"Although applicant considers the above-described operations to be those of a contract carrier, it asks that it be granted a certificate as a common carrier, if we should find its operations to be those of a common carrier. As has been stated, applicant's operations are not limited to the transportation of passengers for the railway only, but between the same points and over the same route it transports passengers in common-carrier service. With respect to such operations, it publishes or participates in tariffs and issues its own tickets."

In yet other cases, the Commission has made an affrmative finding that motor service auxiliary to and
710 supplemental of rail service does not necessarily require a prior or subsequent rail haul. Thus, in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5, 10, there appears the following observation:

"Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing service between the stations, but that between many of them the present means of railroad service, the way-freight train, is uneconomical and inefficient. * * * By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail."

Correspondingly, in justification of its authorization of motor carrier service unconnected with rail hauls, in *Missouri Pac. R. Co. Extension of Operations*, 31 M. C. C. 106, 107-8, it was in part said:

"* * * The evidence of past operations * * * indicates that the transportation by motor vehicle of freight from and to Atchison and Leavenworth, Kans., has not eliminated any train service, but has eliminated the use of several boxcars each week which were loaded only to a small percentage of their capacity. It also has greatly accelerated the movement of less-than-carload traffic between these points. There are no points on the routes between Atchison and the Nebraska State line or between Atchison and Downs from or to which a sufficient volume of less-than-carload freight moves to justify the use of through package cars."

711 And again, from *Missouri Pac. R. Co. Extension —Illinois and Missouri*, 41 M. C. C. 241, another decision of Division 5, we quote the ensuing remarks:

> "• • • Applicant's rail service, however, is uneconomical and inefficient, and it seeks not to enter a wholly new field of service but to substitute a more economical and efficient means of service. One competitive carrier has no vested right in the continuation, by another, of an insufficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of the Commission to retard any form of progress in transportation which will serve the public interest. Public convenience and necessity require the increased economy, frequency and flexibility resulting from the coordinated service in such a case. This is true regardless of whether there is a prior or subsequent movement by rail."

As respects acquisition cases in particular, see *Ozark Truck Lines, Inc., Common Carrier Application*, 32 M. C. C. 459, 461; *Frisco Transportation Company Extension of Operations—Lake City, Ark.*, 32 M. C. C. 141, 144; *Frisco Transportation Company—Purchase—Ozark Truck Lines, Inc.*, 35 M. C. C. 255.

Nevertheless, in the face if these repeated interpretations and applications of the term "auxiliary to and supplemental of rail service" and with all the finality of a *fait accompli*, Division 5 in its 1948 report (Sheet 6) says: "There can be no doubt from the foregoing that the purchases of the described operating rights were approved not for the purpose of permitting applicant to engage in
712 motor operations independent of its proprietary railroad but solely to enable it to render a service auxiliary to or supplemental of rail service."

This, of course, no more than begs the question of what is meant by "service auxiliary to or supplemental of rail service," although the Division thereafter proceeds to its further conclusion that "we have no doubt that confinement of applicant and its proprietary railroad to their legitimate field of service, namely, railroad service, and their exclusion from competitive all-motor operations will clarify and intensify the competitive situation to the direct benefit of the public." It is passing strange that in some instances, examples of which we have previously cited, it is in the public interest for a motor carrier subsidiary of a railroad to conduct common carrier operations unconnected with

rail hauls in the interest of economy of operation, yet, as here, the confinement of a subsidiary motor carrier and its proprietary railroad to service involving a prior or subsequent rail haul will likewise be in the public interest. Frankly, we find it impossible to reconcile these conflicting expressions. Such vacillation might well be termed rhetorical prestidigitation, or, shall we say, legal semasiology. Further, the foregoing conclusion of the Commission is without supporting evidence.

But that is not all. After pointing out (Sheet 3) that all certificates that have been issued to petitioner were made subject to either Condition 5 or 5A, by which the right was reserved to impose such other conditions as the
713 Commission might find necessary to restrict petitioner's operations to service auxiliary to or supplemental of rail service, Division 5, again with the utmost finality, declares that "There can be no doubt that under this reservation we may reëxamine the conditions prescribed in the various certificates in question and change, modify, or add to them to the extent we find necessary to the end indicated."

However that may be, though, any changes or modifications the Commission may undertake to make in the conditions it has attached to petitioner's certificates must come within the four corners of the certificates the Commission has issued, and not be such as to deprive petitioner of the common carrier rights and privileges held by it under and by virtue of such certificates. Stated otherwise, it is not within the legal power of the Commission to revise the conditions attached to its common carrier certificates so as, to all practical intents and purposes, to supplant them by section 209 contract carrier permits. See *United States* v. *Seatrain Lines*, 329 U. S. . . . , 91 L. ed. (Adv. Ops.) 311, decided January 6, 1947. In that case, the Supreme Court cited the Commission's report in *Smith Bros. Revocation of Order*, *supra*, in commenting upon its lack of power to revoke motor carrier certificates where the grounds therefor enumerated in section 212(a) are absent. We submit that any changes or modifications of the conditions attached to petitioner's certificates which would have the effect of converting them into contract carrier per-
714 mits would be tantamount to a revocation of such certificates, and hence do not come within the province of the administrative or discretionary functions of the Commission.

It perhaps would be appropriate to add in this connection that petitioner, in reliance upon the certifications it has been accorded by the Commission, has made substantial investments in equipment and otherwise, this in addition to the $77,000 it paid for the purchased rights. Thus, at the 1944 hearing (R. 141) witness Huffman testified that petitioner then had 306 pieces of equipment in service.

ABSENT FINDINGS SUPPORTED BY ADEQUATE EVIDENCE, THE COMMISSION HAS NO POWER TO ALTER ANY OF THE COMMON CARRIER CERTIFICATES ISSUED TO OR ACQUIRED BY PETITIONER.

Although the above is somewhat akin to the next preceding topic, it is submitted as an independent proposition. Substantiated by evidence and appropriate findings, the Commission from time to time has issued to petitioner the certificates herein under consideration, and petitioner has since conducted its operations in accordance therewith. At a hearing in October, 1944, assigned by the Commission on its own motion, evidence covering the entire gamut of petitioner's operations was adduced, but there was no showing of any violation of the terms and conditions of said certificates nor that petitioner is not in actuality performing a service auxiliary to and supplemental of rail service as that term was understood and defined at
715 the time petitioner came into possession of its certificates. Indeed, although petitioner was authorized in the title case to conduct operations independent of rail service between Monahans, Texas, and Lovington, N. M., it was brought out at the 1944 hearing (R. 121) that such independent operations have been largely discontinued and that petitioner is now operating mainly on rail billing in that sector.

Nevertheless, says the Division (Sheet 4), petitioner was given the opportunity of presenting evidence to show that no need exists for a change in its present conditions. But isn't that putting the cart before the horse? It is well-settled that a finding without evidence is beyond the power of the Commission, *United States* v. *Abilene & S. Ry. Co.*, 265 U. S. 274; and that it is the duty of the Commission to render its decision in accordance with the evidence, *Chicago Junction Case*, 264 U. S. 258. Also, by way of analogy, the findings so made must be sufficient to inform the parties and the court of the reasons for the Commission's action, "with that high degree of certainty which may properly be expected from a group of administrative experts."

Heitmeyer v. *Federal Communications Commission*, 95 F. (2d) 91, 96.

And further, with direct regard to proceedings under the motor carrier statute, the Commission has similarly expressed itself. For instance, in *Lincoln Tunnel Applications*, 43 M. C. C. 707, 711, it was stated that section 212(a) has for its purpose the protection of operating rights against arbitrary cancellation or diminishment thereof; and from *Joint N. E. Motor Carrier Assn.*,
716 *Inc.* v. *Rose and Welloff*, 43 M. C. C. 487, we abstract the following paragraph:

> "No evidence was offered at the hearing by complainant or intervener in substantiation of the allegations in the complaint. Obviously, in the absence of such evidence, we are without any basis for proceeding under either section 204(c) or 212(a) of the act. In the instant proceeding, the burden of proof clearly was upon complainant, and the failure of defendants to appear in no wise relieved it of the obligation of proving its allegations."

What evidence, then, is there of record to uphold an order of the Commission altering or diminishing the common carrier operating rights now held by petitioner, based upon a finding that it has not fully complied with the terms and conditions attached to its certificates or that some change of conditions has taken place since they were issued? We find none. Petitioner's operations have been open and above-board. The testimony of the witness who was interrogated as to the operations of petitioner will be found at pages 103-142 of the 1944 record. The Division has made no findings remotely suggesting that anything was developed at said hearing tending to prove that petitioner's operations are not being conducted in strict accordance with the terms and conditions incorporated in its certificates; the only comment made thereon (Sheet 3) is that, in addition to questions by the Examiner, an intervener also questioned the witness with respect to certain portions of applicant's present operations. True, elsewhere on the same
717 sheet, after mentioning that the authority acquired by petitioner under the purchased certificates is subject only to Conditions 2 and 5A, the Division added that the all-motor operations so conducted "are contrary in our opinion to the national transportation policy and clearly show a need for reexamination of the conditions in question." That conclusion, however, has nothing to do with the evidence, and we have hereinabove abundantly

demonstrated that the Commission is precluded at this time from revising its early construction of the meaning of Conditions 2 and 5A to which petitioner's purchased certificates were subjected.

Section 207 and Section 5 Proceedings Are Not Concerned With Rates

In sections 207 and 5 (formerly 213) the Congress has laid down the conditions governing respectively the issuance and transfer of certificates of convenience and necessity, and section 217 deals with rate matters. At an early date in its operations under the motor carrier statute, it has been recognized by the Commission that the imposition of restrictions as to rates in certificate proceedings "would be inconsistent with the provisions of the act, and, therefore cannot lawfully be imposed." *Folse Drayage Co., Inc., Common Carrier Application*, 1 M. C. C. 678. A substantially identical holding is found in *Paddison Extension of Operation—The Dalles, Oreg.*, 21 M. C. C. 324, 327, as well as in a number of other decisions subsequent to the *Folse Drayage case*.

718 To limit petitioner to the handling of shipments which move on rail billing would be to deny it the right to publish and maintain its own rates and tariffs as required by section 217 of the holders of common carrier certificates. Likewise, the report and order of Division 5 would deprive petitioner of the privilege accorded common carriers of property by motor vehicle under section 216(c) of establishing "reasonable through routes and joint rates, charges and classifications with other such carriers or with common carriers by railroad and/or express and/or water."

The various aspects of this subject have been treated at some length at pages 35-37 and 73-75 of a petition for reconsideration dated May 23, 1946, and now pending before the Commission in No. MC-F-445, *The Rock Island Motor Transit Company—Purchase—White Line*, in view of which it is thought that a more elaborate presentation thereof in this connection would be superfluous.

The Evidence Does Not Warrant the Establishment of Alexandria, La., as a Key Point

The preceding discussion has related primarily if not altogether to the requirement of Condition 1 that the service rendered by petitioner be auxiliary to or supplemental of rail service. Petitioner does not here present any issue as to Conditions 2 or 4, but it does object to the naming by Di-

vision 5 of Alexandria as a key point in Louisiana un-
719 der Condition 3. On Sheet 9 of its report, Division 5 conjectures that at each of the points on Railway's network of rail lines between Alexandria and New Orleans "Railway no doubt originates shipments to Alexandria and points beyond." Also, "There is nothing of record to show that Alexandria and all other Texas and Pacific Railway points south thereof intermediate to New Orleans do not originate enough less-than-carload traffic to justify operation of a merchandise car from Alexandria to Shreveport."

But the findings and conclusions of the Commission may not be based upon surmise and conjecture nor upon the want of evidence. The evidence of record (R. 117-20, 132) is to the effect that the volume of merchandise traffic originated by Railway in Louisiana outside of New Orleans is wholly insufficient to operate merchandise cars regularly from either Shreveport or Alexandria in economic and expeditious service. In a prior section of this document various cases have been cited where the Commission has recognized the necessity for highway service by the motor carrier affiliate of a railway where the volume of local traffic is light.

The Division states that to permit petitioner to transport shipments for the distance of approximately 313 miles between Shreveport and New Orleans would result in a motor service not having a bona fide relation to rail service, but to attain the most efficient and economical integrated rail-motor service distance is not a prime factor. If a more expeditious service can be afforded by means of high-
720 way operation, and the uneconomical use of railway equipment sorely needed for other traffic, particularly under existing conditions, can be avoided, we submit that it is not only logical but imperative that the substitute motor service be afforded. Flexibility and efficiency of operations are of far more importance than slavish devotion to a rule-of-thumb formula.

Further comment upon the proposed establishment of Alexandria as a key point will be found on pages 23-25 of the exceptions filed by petitioner to the proposed report of Examiners Waters and Boss herein, due consideration of which in connection herewith is requested.

Establishment of Dallas-Fort Worth (Jointly) and Abilene as Key Points is Not in Consonance With Petitioner's Purchased Operating Rights

Division 5 (Sheet 9) states that Dallas and Fort Worth will be made a single key point and that, jointly, as pro-

posed by the Examiners, Abilene will be designated a key point. While we appreciate the liberality of the Division in recognizing that Dallas and Fort Worth should properly be treated as single key point, and also that neither Marshall nor Longview should be named as key points, we direct attention to the fact that each of these stations, togeth. : with Abilene, is located within the limits of the common carrier operating rights acquired by petitioner by purchase within the sanction of the Commission.

These operating rights, as the Commission has here-
721 tofore recognized in numerous instances hereinabove pointed out at some length, confer upon petitioner the privilege of conducting its operations as a common carrier without restriction as to the scope thereof. But to establish key points anywhere along the line between Shreveport and Gladewater and between Wills Point and Big Spring, respectively, would constitute a serious and unwarranted restriction upon the operating rights acquired by petitioner for a valuable consideration, and in practical effect would curtail its free operations as a common carrier. In this immediate connection, the following excerpt from the testimony of witness Huffman (R. 115) throws some light upon the practical operations of petitioner and upon the necessity of affording it freedom of action in the conduct of its business:

> "A. * * * I want to make this very clear to you: We don't put anything on the trucks that we can put in box cars, and give anywhere near the service. We put everything we can in box cars and move it as such. I would say only about twenty per cent of the interstate tonnage, or the tonnage, I will say, both state and interstate, is moved by trucks, and seventy-five or eighty per cent of it therefore is moved in box cars, and this tonnage, this small amount of tonnage, is to supplement that service, usually using the tonnage that comes in after the departure of the trains."

We therefore submit that the Commission should refrain from naming Dallas-Fort Worth ad Abilene, as well as Alexandria, as key points so far as the operations and service of petitioner are concerned.

722 PARTIES WERE NOT INFORMED OF PURPOSE OR OBJECT OF 1944 HEARING

On Sheet 4 of the 1948 report of Division 5 we find the following comment:

"Applicant argues that the notice setting the proceedings for further hearing did not inform it or the other parties of the nature of the issues to be met, or give them sufficient time to prepare to meet the issues; and that the hearing, in view of the request for its cancelation, was in the nature of an *ex parte* proceeding. We are not impressed with applicant's argument that it was unable to foresee the issues. The notice in question stated that the further hearing was for the purpose of determining what changes, if any, should be made in the conditions, and thus placed the conditions themselves in issue. One of these is condition 5 or 5A, which in itself was adequate notice to applicant and the other parties that the primary purpose of the further hearing would be to determine, as provided for in that condition, whether it is necessary to change or modify the existing conditions or to add others so as effectively to restrict applicant's operations to service which is auxiliary to or supplemental of rail service."

But there is much more than here readily meets the eye—the report is insufficiently documented. At the time such hearing was set there was pending before the Commission no request from petitioner for a further hearing; in point of fact, petitioner had notified the Commission that it was not seeking any changes in its then existing authority.

723 Neither was there pending before the Commission a complaint from anyone concerning the operations of the integrated rail-motor operations of petitioner and Railway, and thereafter, at the hearing, entire satisfaction was expressed by all parties concerned with such operations.

As for the observation in the foregoing quotation from the 1948 report that Condition 5 or 5A "was adequate notice to applicant and the other parties that the primary purpose of the further hearing would be to determine * * * whether it is necessary to change or modify the existing conditions or to add others so as effectively to restrict applicant's operations to service which is auxiliary to or supplemental of rail service," we beg to disagree. As we have been at pains hereinabove to demonstrate, the auxiliary and supplemental service that was being afforded by petitioner was strictly in accord with the common carrier service authorized under the certificates which it held, as defined by the Commission at the time such certificates were issued to or acquired by it, and certainly neither petitioner nor any other party

concerned had any reason to anticipate or assume that the Commission would endeavor, at this late date, to withdraw the common carrier rights so conferred upon petitioner and to supplant them with some inferior or subordinate contract carrier authorization, contray to the statutory provisions being administered by the Commission.

The Division correctly states (Sheets 2-3) that at the outset of the hearing petitioner announced its objection to any change being made in the conditions attached
724 to its operating authorities, and that it was joined by serveral interveners in a motion for a discontinuance of the further hearing, but that such motion was denied and the Examiner thereupon proceeded to question a witness made available by petitioner. Before such examination began, however, counsel for one of the interveners made inquiry of the Examiner as to the purpose of the testimony to be elicited by him. Following some discussion of the matter, the following exchanges occurred (R. 90-92):

"Mr. Rawlings: That is where I get lost in the proceedings. I understand from the statement of counsel for applicant that they are seeking no modification or amendment of the present operating authority, and that being true the client I represent has no protest to offer. If you are opening this case up on this testimony with the view of changing or modifying or eliminating any restrictions, that puts a different aspect on the hearing. The applicant having stated on the record that they seek no modifications, and that they want to withdraw their original application, I don't understand the purpose and effect of the testimony that is now being adduced, unless the Commission has some suspicion that they are not operating in keeping with their restrictions, which would be an enforcement problem rather than a modification of the authorities. I just want to get clear on the record, so I will know how to represent my client here.

"Exam. Waters: I don't think the Commission has any suspicion that they are doing anything they are not supposed to do I am not qualified to speak for the Commission, but it would seem to me that if they were operating unlawfully we would have had some complaint before this.

725 "Mr. Rawlings: I don't see that that is properly in this proceeding here, and therefore I don't understand why you have to have some testimony to reaffirm

the authority they already have, when nobody is trying to make any change in it.

"Exam. Waters: There is no change contemplated in the certificates, in the routes, or points between which they operate. There may be some change in the conditions. That depends on what is introduced here.

"Mr. Rawlings: Well, there has been no issue made. I am not trying to argue with you, but—

"Exam. Waters: Yes.

"Mr. Rawlings: I am trying to clarify it. The applicant says they don't want any changes made, and the protestants are not asking for any changes to be made that I know anything about, and the applicants ask to withdraw their application and close the hearing, so it looks like we are trying to make an issue where none exists.

"Exam. Waters: Well, I don't know that they—that is, the Commission,—have any knowledge of just how the applicant is operating. Maybe if they had that knowledge,—

"Mr. Rawlings: They have knowledge of their present operating authority, and it is presumed they are operating in keeping with the authority they have, so I don't know what purpose the hearing will serve. I presume they are operating lawfully, within the terms of their authority, so I don't know why they have to have a hearing and some testimony to see whether or not they are operating properly under the authority they have in their present operation, when there is no complaint about their operations. In other words, I
726 just don't know what the issue is, and I want to know what the issue here is so I will know how to keep up with it. Right now I am lost. I don't know what it is."

We likewise invite the attention of the Commission to the following observations made at the close of the hearing (R. 145) by representatives of the Dallas and Fort Worth commercial interests:

"Mr. Currie: On behalf of the shipping interests of Dallas, which is the city, I think, probably the most vitally affected by this operation throughout the territory served by this applicant, and because the regulation is supposed to be in our interest, we think that if the Commission should determine to make any changes in this operation that we, as the persons most vitally affected, all are entitled to notice of just what is specifi-

cally proposed, so that we may at that time, and in advance of any hearing, determine what effect such specific proposal would have on our operations, so that we would then know how to go about deciding whether such specific contemplated change is needed, or is in the interest of the particular part of the public which we are.

"Mr. Byars: Our position is substantially the same as that of Mr. Currie. Fort Worth is very vitally interested and affected by any change that might be made in the operations of the T. & P. Railroad and the T. & P. Motor Transport Company, and we certainly had no idea what was in the mind of the Commission, so I was very glad to hear the Examiner say that the Commission had no preconceived notions or ideas as to what might be done. We are satisfied with the operation of these two carriers; we depend upon them very largely to get our freight to destinations, and we want them to remain as they are."

727 Only recently, we have been afforded the benefit of an expression of the legislative intent as respects the legal rights of litigants before agencies to which are intrusted the administration of the law of the land. We have reference to the Administrative Procedure Act, Public No. 404, approved June 11, 1946. So far as is here relevant, we quote as follows from Section 5 of that enactment.

"Sec. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, * * *:

"(a) *Notice.*—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, the nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. * * *"

We fully appreciate that the foregoing section of the statute was not enacted and did not become effective until after the hearing, but we none the less submit that the above affirmatively reflects the legislative concept of what constitutes due process of law in the conduct of hearings by administrative agencies.

We now have at hand the report and order herein of Division 5, which lends color to the thought interjected at the hearing by Mr. Byars that such hearing was held
728 with the preconceived determination to delimit the operations of petitioner to those of a contract carrier as a mere adjunct of Railway.

Conclusion

Premises considered, petitioner prays that the Commission grant its petition set forth at the outset hereof, including an opportunity to present oral argument before the entire Commission in the event the Commission does not in the absence thereof discontinue further proceedings in respect of the applications herein under review.

In presenting this plea, petitioner desires to add in this connection, to avoid any possible misconception of its position in that regard, that it would welcome an amendment of its present authority in Sub-No. 11 which would permit it to engage in joint operations with the Texas and New Orleans Railroad Company along with the other railroads named in its certificates, but with the elimination of the Jefferson & Northwestern Railroad, now abandoned. Petitioner additionally would be disposed to accept the substitution of Monahans as a key point in lieu of Big Spring and Lovington. As the price of obtaining these modifications of the conditions now attached to its operating certificates, however, petitioner is not prepared to accept the remaining limitations upon its operations that are contemplated
729 and would be entailed by the 1948 report and order herein of the Division, and in opposition to which this petition is addressed.

Respectfully submitted,

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J. T. Suggs
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922 Texas & Pacific Bldg.,
Dallas, Texas,
April 8, 1948.

730 *Order*

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of May, A. D., 1949

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION
Dallas, Texas

No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—WILLS POINT—GLADEWATER, TEX.

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING—PECOS, TEX.

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MARSHALL—TEXARKANA, TEX.

No. MC-50544 (Sub-No. 5)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS—ABILENE, TEX.

No. MC-50544 (Sub-No. 6)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ABILENE—BIG SPRING, TEX.

No. MC-50544 (Sub-No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 8)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS—WILLS POINT, TEX.

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE—FORNEY, TEX.

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—BIG SPRING—HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS—EL PASO, TEX.

No. MC-50544 (Sub-No. 12)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—TEXARKANA

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—FORT WORTH, TEX.

731 No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEX.

No. MC-50544 (Sub-No. 22)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS—FORT WORTH

Upon consideration of the records in the above-entitled proceedings, and of petition of applicant for reconsideration, and vacation of the report and order on further hearing of Division 5, and for oral argument, dated April 8, 1948; and good cause appearing therefor:

IT IS ORDERED, That said petition be, and it is hereby, denied.

By the Commission.

(Seal)

W. P. BARTEL
Secretary

734 *Order*

Interstate Commerce Commission

No. MC-50544

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION
Dallas, Texas

No. MC-50544 (Sub-No. 1)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—WILLS POINT—GLADEWATER, TEX.

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—BIG SPRING—PECOS, TEX.

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—MARSHALL—TEXARKANA, TEX.

No. MC-50544 (Sub-No. 5)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—DALLAS—ABILENE, TEX.

No. MC-50544 (Sub-No. 6)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—ABILENE—BIG SPRING, TEX.

No. MC-50544 (Sub-No. 7)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—ALTERNATE ROUTES

No. MC-50544 (Sub-No. 8)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—DALLAS—WILLS POINT, TEX.

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—MESQUITE—FORNEY, TEX.

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—BIG SPRING—HOBBS

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—PECOS—EL PASO, TEX.

No. MC-50544 (Sub-No. 12)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—TEXARKANA

No. MC-50544 (Sub-No. 14)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—FORT WORTH, TEX.

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—ALEDO, TEX.

735 No. MC-50544 (Sub-No. 22)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—DALLAS—FORT WORTH

PRESENT: Charles D. Mahaffie, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the records in the above-entitled proceedings, and of request of applicant, dated June 18, 1949, for further extension of effective date; and good cause appearing therefor:

IT IS ORDERED, That the order entered herein on January 22, 1948, as subsequently modified to become effective on July 5, 1949, be, and it is hereby, further modified to become effective on August 4, 1949.

Dated at Washington, D. C., this 22nd day of June, A. D., 1949.

By the Commission, Chairman Mahaffie.

(Seal) W. B. BARTEL
Secretary

736 Form B. M. C. 8

APPLICATION FOR CERTIFICATION OF PUBLIC CONVENIENCE AND NECESSITY—PROPERTY

(This form is to be used by applicants who propose, as common carriers of property, (1) to continue an operation, or the extension of an operation, in interstate or foreign commerce instituted between June 1, 1935, and October 15, 1935, inclusive; (2) to institute an operation in interstate or foreign commerce at any time subsequent to October 15, 1935; or (3) to extend an operation for which a separate application has been filed with or certificate issued by the Interstate Commerce Commission under the Motor Carrier Act, 1935.)

(Before answering, read General Instructions on last page. Numbers under line refer to Special Instructions on that page)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY (Full and correct name) for a Certificate of Public Convenience and Necessity authorizing common carrier service in the transportation of property in interstate or foreign commerce under the Motor Carrier Act, 1935

DOCKET NO. 30544 (Do not fill in)

APPLICATION

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, D. C.

Applicant States:

I. That full and correct name of applicant is THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY Business address Texas & Pacific Bldg., Dallas (Street and number) (City) Dallas, Texas (County) (State)

II. That applicant is a corporation, doing business or proposing to do business under the trade name (1) or style of THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, and that information respecting applicant is set forth in EXHIBIT A, attached hereto and made a part hereof.

III. That applicant herein applies for authority (1) to continue an operation √, (Check) or the extension of an operation ..... (Check) as a common carrier of property in interstate or foreign commerce, which operation or extension was instituted between June 1, 1935, and October 15, 1935, inclusive; (2) to institute such an operation at a time subsequent to October 15, 1935 ..... (Check); or (3) to extend an operation for which a separate application has been filed with or certificate issued by the Interstate Commerce Commission under the Motor Carrier Act, 1935 ..... (Check): and that a description of the operation or extension for which authority is sought herein and of the class or classes of property transported or to be transported, is set forth in detail in EXHIBIT B, attached hereto and made a part hereof.

IV. That applicant sets forth, in EXHIBIT C, attached hereto and made a part hereof, the facts and circumstances upon which applicant relies to establish that the public convenience and necessity require or will require the service for which application is herein made.

V. That applicant sets forth in EXHIBIT D, attached hereto and made a part hereof, facts and circumstances to show that applicant is fit, willing, and able properly to perform the service for which application is herein made and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission thereunder.

VI. That applicant has complied with the order of the Commission relative to the service of this application and of notice of the filing thereof on interested parties, as shown in EXHIBIT E, attached hereto and made a part hereof.

VII. That applicant will submit such additional information in support of this application as the Commission may require.

WHEREFORE, The applicant prays: That the Commission issue a Certificate of Public Convenience and Necessity authorizing applicant to engage in, or continue, the transportation of less-than-carload commodities generally (State whether commodities generally, with certain exceptions, or special commodities only) with certain exceptions, in interstate or foreign commerce, over the route or routes or within the territory herein described.

Dated this 16th day of Januay, 1936.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY.
(Applicant)

By (Sgd) J. L. LANCASTER
(Title) *President*

OATH

State of Texas,
County of Dallas. } ss.:

J. L. Lancaster makes oath and says that he is the (Name of affiant)
President of the THE TEXAS AND PACIFIC MOTOR TRANSPORT (Title of affiant) (Name of applicant)
COMPANY; that he is authorized on the part of said applicant

to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Sgd) J. L. LANCASTER

Subscribed and sworn to before me a Notary. Public in and for the State and County above named this 16th day of January, 1936. [SEAL]

(sgd) ADDIE BASSETT

My Commission expires May 31, 1937.

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Exhibit A

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
(Name of applicant)

ORGANIZATION INFORMATION

1. If applicant is a *corporation*, furnish the following information:
   (a) Date June 21, 1929 and State Delaware of incorporation.
   (b) Names and business addresses of directors:

Name	State, City, and Street Address
J. L. Lancaster	T&P Bldg., Dallas, Texas.
L. W. Baldwin	Mo. Pac. Bldg., St. Louis Mo.
J. B. Payne	T&P Bldg., Dallas, Texas.
M. D. Cloyd	T&P Bldg., Dallas, Texas.
Matthew C. Brush	New York City, N. Y.

   (c) Names and business addresses of officers:

Name	State, City, and Street Address	Office Held
J. L. Lancaster,	T&P Bldg., Dallas Texas.	Chairman of the Board.
Herbert Fitzpatrick,	Term. Tower, Cleveland, O.	VP-Law & Corporate Relations.
Wm. Wyer,	Term. Tower, Cleveland, O.	VP-Asst. Secy. & Asst. Treasurer.
J. B. Payne,	T&P Bldg., Dallas Texas	Vice-President.

Name	State City and Street Address	Office Held
T. D. Gresham,	T&P Bldg., Dallas Texas.	General Counsel.
M. D. Cloyd,	T&P Bldg., Dallas Texas.	Secretary.
A. L. Ewing,	T&P Bldg., Dallas Texas.	Treasurer.
A. J. Biard,	T&P Bldg., Dallas Texas	Auditor.
C. W. Veitch,	Term. Tower, Cleveland, O.	Asst. Secy. & Asst. Treasurer.
Edwin Wagner	Term. Tower, Cleveland, O.	Asst. Secy. Asst. Treasurer.

(d) Names and business addresses of ten principal stockholders and their respective holdings:

Name	State, City, and Street Address	Extent of Interest (2)
The Texas and Pacific Ry Co.,	T& P. Bldg., Dallas, Tex.	995 Shares
J. L. Lancaster	T& P. Bldg., Dallas, Tex.	1 Share
L. W. Baldwin	Mo. Pac. Bldg., St. Louis, Mo.	1 Share
J. B. Payne	T& P. Bldg., Dallas, Tex.	1 Share
M. D. Cloyd	T & P. Bldg., Dallas, Tex.	1 Share
Matthew C. Brush	New York. N. Y.	1 Share

(e) Attach to the original, only, of this application and identify as Statement A-1-e, a copy of articles of incorporation and bylaws, with all amendments, certified to by a proper officer of applicant.

738 (f) If applicant, or the real party in interest, is engaged in any other form of transportation or in the business of warehousing, transportation brokerage, or any other similar activity which is a part of or connected with transportation, or holds any interest in any individual, partnership, corporation, or other organization so engaged, indicate the character of the business and applicant's relation thereto and interest therein.

Character of business	By whom conducted	Interest of applicant (or real party in interest) in such business
Applicant is also engaged in intrastate transportation by rail over the lines of the Texas and Pacific Railway Company and subsidiary railway companies. The majority of the stock of applicant is owned by The Texas and Pacific Railway Company, and applicant operates as a common carrier by railroad of less-than-carload freight in intrastate commerce over the lines of said railway company and its subsidiaries.	Applicant	Proprietor

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Exhibit B

Form B. M. C. 8

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
(Name of applicant)

DESCRIPTION OF OPERATIONS

1. Describe the operations covered by this application as follows:

(a) Operations over a regular route or routes and between fixed termini:

(1) Between Monahans, Texas and Lovington, New Mexico, as follows
(Indicate furthermost points on route)

(i) From Monahans to Tex-New Mex. St. Line, via Highway Texas No. 82
(Indicate furthermost points under each highway number)
(Use U. S. highway number wherever applicable; otherwise, State or County highway number)

(ii) From Tex-New Mex. St. Line to Lovington, N. M., via Highway N. M. No. 18

(Return same route)

(Repeat as above for each route and parts thereof. See example in Note 4 on last page. Indicate in each case whether return routes correspond to those above described. If not, furnish similar description for return route. Furnish map showing each route.)

Show also, *for each route separately:*

(2) The intermediate and off-route points served or proposed to be served by ap-

plicant in connection with transportation in interstate or foreign commerce No off-route points. Intermediate points are Hobbs, Eunice, Jal, Teague, Pog, Maypens, Kornegay, Kimbrough, all of which are in New Mexico, and Cheyenne, Wink and Kermit in the State of Texas. Also any intermediate points on route which may be established.

(5)

(3) The class or classes of property transported or proposed to be transported by applicant in interstate or foreign commerce, whether (a) commodities generally, with certain exceptions, Less-than-carload commodities generally, except jewelry, money, valuable papers, high explosives, corpses, articles too large to handle on truck, and similar goods.

(State exceptions, either specifically or by their general nature)

or, (b) special commodities .....

.....

(State class or classes of commodities)

(4) The present or proposed time schedule (attach copy and identify as Statement B-1-(a)-4).

(5) The extent, if any, to which operations covered by this application are or will be seasonal and the months of the normal operating season Operations are not seasonal.

(6) The present or proposed interchange arrangement:

Point of interchange	Names and addresses of carriers with which traffic is or is to be interchanged	Interchange arrangements	
		Physical handling	Rates
Monahans, Texas	The Texas and Pacific Railway Company	(6) Lading transferred between trucks and rail cars	(7) Joint Rates
All points on route	Texas-New Mexico Railway Company		

(7) If application covers existing operations, date on which operations were instituted: September 25, 1935.

(8) If such operations were instituted by someone other than applicant, show by whom instituted and manner and date of applicant's acquisition of such operations. File copy of sales agreement, court order, articles of consolidation or merger, or other evidence of applicant's acquisition of such operations. Identify as Statement B-1-(a)-8. Instituted by Applicant

(9) If any of the operations covered by this application are conducted or are proposed to be conducted by applicant under lease or operating agreement with another, or are conducted by another under lease or operating agreement with applicant, give name and address of such other party Not so conducted (Attach copy of such lease or agreement, identified as Statement B-1-(a)-9.) Also state whether authority to lease or contract to operate has been applied for under Section 213, Motor Carrier Act, 1935 No (Yes or No)

(b) Operations solely within municipal areas:

If operations covered by this application are conducted or are proposed to be conducted solely within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, indicate the area within which such operations are conducted or proposed to be conducted and set forth all information requested in (a) (3), (5), (6), (7), (8), and (9) above.

(OVER)

740 **Exhibit B—Concluded**

(c) Operations other than over regular routes and between fixed termini or within municipal areas:

* * *

(d) Motor vehicle equipment and other facilities:

(1) The motor vehicle equipment used or proposed to be used by applicant in the operations covered by this application is as follows:

Type (8)	Make	Year of Model	Manufacturers' rated capacity	Length	Width	Height	Type of body
(Tractor and semi-trailer)	1-Ford	1935	1½ tons	32'*	96"	66"	(Freuhauf
(Six-wheel units)	3-Ford	1936	" "	"	"	"	(van

* Tractor 12 ft., trailer 20 ft.

(2) If any of the equipment set forth in (1) above is not or will not be owned by applicant, give the information indicated below:

Number of units	Description of units	Name and address of owner	Basis of payment for use
	(8)		

(All owned by Applicant)

(e) Description and location of other property, except office equipment, used or proposed to be used in the performance of the transportation service covered by this application, such as dock and terminal facilities, garages, machine shops, etc. Applicant uses the depot and terminal facilities of the Texas-New Mexico Railway Company at points on its route. Garage work is contracted for at independent establishments.

741 *Exhibit C*

Form B. M. C. 8

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
(Name of applicant)

PUBLIC CONVENIENCE AND NECESSITY

Set forth the facts and circumstances upon which applicant relies to establish that the service covered by this application is or will be required by the present or future public convenience and necessity, including:

1. The names and addresses of all motor carriers and all carriers by rail and water, known to applicant, with whose service the operations described in this application are or will be directly competitive.
2. The reasons, briefly and clearly stated, why the transportation service covered by this application is or will be required by the present or future public convenience and necessity.

1. Walter Cowley, San Angelo, Texas, doing business as Sunset Truck Lines, operates over a portion of applicant's route, between Monahans and Wink, Texas.

   Cecil White, Hobbs, N. M., doing business as Roswell-Hobbs Truck Line, operates along applicant's route from Lovington to Hobbs.

   Rainbow Truck Lines, Roswell, N. M., does not operate over any portion of applicant's route but does operate into Hobbs from the west.

   L. B. Merton, Wink, Texas, doing business as Hobbs-Wink Truck Line, operates along applicant's route from Hobbs to Wink.

   Texas-New Mexico Railway Company operates between all points on applicant's route. Applicant's service is supplemental to and not competitive with its service.
2. (See Statement C-2 attached)

Exhibit D

Qualifications of Applicant

State the facts and circumstances upon which applicant relies to show that applicant is fit, willing, and able properly to perform the service for which application is herein made and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission thereunder, including:

1. A detailed statement of applicant's assets and liabilities on the date of this application. (Attach and identify as Statement D-1.)
2. If applicant has been engaged in motor carrier operations prior to the date of this application, furnish, if available, an income and profit and loss statement for the year or 6 months immediately

preceding such date, or the period of applicant's operations, if less than 6 months. (Attach and identify as Statement D-2.)

3. A statement containing a brief description of the experience of the principal officers and operating personnel of applicant's present or proposed organization. (Attach and identify as Statement D-3.)
4. Any other facts relevant to the ability of applicant properly to perform the service covered by this application:

Applicant is in a position to provide any additional facilities necessary to meet the needs of the public and stands ready and willing to do so. Its financial condition and operating history are an assurance of uninterrupted satisfactory service.

NOTE: Applicant stands ready and willing to supplement the attached statements by furnishing any information which the Commission may desire on the points inquired of.

Exhibit E

CERTIFICATE OF SERVICE

I, R. S. SHAPARD, General Solicitor, of the applicant, do
(Name of affiant) (Title of affiant)
hereby certify that upon the 16th day of January, 1936, I served the foregoing application upon the Boards, Commissions, or officials (or the Governor where there is no Board, Commission, or official) of the States of Texas and New Mexico, in which States applicant operates or proposes to operate, by delivering in person or by registered mail, a true, correct, and complete copy of this application to each thereof at the following addresses:

Railroad Commission of Texas — Austin, Texas
(Name of Board) (Address)

State Corporation Commission of New Mexico — Santa Fe, New Mexico

I FURTHER CERTIFY that I served a notice of the filing of this application, as required by Form B. M. C. 15, by delivering in person or by registered mail a copy thereof to each of the carriers named in answer to item 1 of Exhibit C of this application.

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.
by (Sgd) R. S. SHAPARD
(Applicant)

This form is to be used *only* by applicants who propose to operate as common carriers of property in interstate or foreign commerce under any one or more of the following circumstances:

First, when the applicant desires authority to commence a new common carrier operation;

Second, when applicant seeks authority to continue conducting an operation which was started between June 1, 1935, and October 15, 1935, inclusive;

Third, when applicant seeks authority to continue operating an extension of an older operation where the extension was started between June 1, 1935, and October 15, 1935, inclusive;

Fourth, when applicant desires authority to extend operations which are covered by a separate application filed with or a certificate issued by this Commission under the Motor Carrier Act, 1935.

No operation shall be started or extended after October 15, 1935, unless and until the applicant shall have first obtained a certificate from the Interstate Commerce Commission authorizing such operation.

As used here, an extension means not only the establishment by the applicant of a new route or the service of territory not previously traversed or served by applicant, but also substantial additions to the classes of property which the applicant undertakes to handle. The transfer of the rights of another operator does not constitute an extension.

Persons who have instituted or extended an operation between June 1, 1935, and October 15, 1935, inclusive, must discontinue such operation at the expiration of 120 days after October 15, 1935, unless before that time they shall have filed an application for authority to continue such operation or extension. If such application has been filed, they may continue such operation or extension, under such regulations as the Commission shall prescribe, until otherwise ordered by the Commission.

Attention is called to the exemptions provided in Section 203 (*b*), Motor Carrier Act, 1935. If there is doubt as to whether the service rendered or proposed is or will be subject to the Act, an application should be filed in order that the question may be determined by the Commission.

The words "under a common control, management, or arrangement for a continuous carriage or shipment" im-

ply a joining of two or more carriers in a through service over their respective routes in interstate or foreign commerce. The most common, but not the only, evidence of such transportation is the carriage of property on through bills of lading or similar documents or through rates, without the intervention of the shipper or consignee at the interchange or transfer point.

For the purpose of this application, operations conducted within any reservation under the exclusive jurisdiction of the United States are considered interstate in character. However, operations principally for the purpose of transporting passengers within the national parks and national monuments and under the control of the Secretary of the Interior are exempted.

Before a certificate may be issued by the Interstate Commerce Commission in response to any application, the applicant must comply with the rules and regulations of the Commission covering the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements for the protection of the public, as provided in Section 215 of the Motor Carrier Act, 1935. Each applicant will be notified of such requirements.

Attention is called to the definition of "common carrier" in Section 203 (a) (14) of the Act.

Applications should be typed and one copy retained for applicant's files. The original application, properly signed and sworn to before a notary public, and one additional copy, must be returned to—

THE INTERSTATE COMMERCE COMMISSION
BUREAU OF MOTOR CARRIERS
Washington, D. C.

One true copy must be filed, in person or by registered mail, with the Board, Commission, or official (or Governor if there is no Board, Commission, or official) having authority to regulate the business of transportation by motor vehicles, of each State in or through which applicant operates or proposes to operate. Also, a notice of the filing of the application, according to Form B. M. C. 15, must be served, personally or by registered mail, upon each motor carrier and each carrier by rail or water, known to applicant, with whose service the operations described in this application are or will be directly competitive.

If space provided in form is not sufficient, prepare answer on separate sheet, attach it to application, and give it the same number as question or statement to which it refers. Exhibits and statements attached shall be 8½ by 14 inches in size, or folded to these dimensions.

Applicant's attention is called to the penalties for unlawful operations and practices provided in Section 222 of the Act.

SPECIAL INSTRUCTIONS

(1) State whether individual, firm, partnership, corporation, company, association, joint-stock association, or other form of enterprise, or a trustee, receiver, assignee, or personal representative thereof.

(2) Indicate the class and amount of securities or other evidence of interest held, and the percentage this amount represents of the total of such securities outstanding, or of the total value of the business.

(3) Indicate office held, the amount and character of any securities or other evidences of ownership or indebtedness held, and the percentage such holdings represent of the total of such securities or other evidences of ownership or indebtedness outstanding. If office and interest are held, describe both.

(4) Typical example of route description, as required in B-1-(a):

1. Between Kansas City, Mo., and Denver, Colo., as follows:
   - (I) From Kansas City, Mo., to Salina, Kans., via U. S. Highway No. 40.
   - (II) From Salina, Kans., to Oakley, Kans., via U. S. Highway No. 40 South.
   - (III) From Oakley, Kans., to Junction with U. S. Highway No. 40 North, via U. S. Highway No. 83.
   - (IV) From Junction of U. S. 83 and U. S. 40 North to Limon, Colo., via U. S. Highway No. 40 North.
   - (V) From Limon, Colo., to Denver., Colo., via U. S. Highway No. 40.

   Return trip over same route.

(5) By "off-route point" is meant any point not situated on a main highway but which is served by a vehicle using such highway as part of its regular route. The words are not meant to include points served by branch or feeder lines.

(6) Indicate whether the property transported is or will be transferred to or from equipment of applicant, or whether equipment used up to point of interchange is or will be continued in operation to points beyond. Also, state character and ownership of any dock or terminal facilities used in interchange.
(7) State whether joint rates are or are to be used.
(8) That is, truck, tractor, semitrailer, 2-wheel trailer, or 4-wheel trailer. List each unit separately except where units are identical, in which case also give number of units.

743 *Statement A-1-e*

State of Texas, }
County of Dallas. }

I, M. D. CLOYD, Secretary of The Texas and Pacific Motor Transport Company, hereby certify that the attached mimeographed sheets constitute true and correct copies of the charter, by-laws and all amendments thereto of The Texas and Pacific Motor Transport Company.

In testimony hereof I hereunto set my hand and affix the seal of said company at Dallas, Texas, this the 16th day of January, 1936.

(sgd) M. D. CLOYD
Secretary.

SEAL

744 CERTIFICATE OF INCORPORATION
OF
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

We, the undersigned, for the purpose of associating to establish a corporation for the transaction of the business and the promotion and conduct of the objects and purposes hereinafter stated, under the laws of the State of Delaware (particularly an Act entitled "An Act providing a General Corporation Law" approved March 10, 1899, and the acts amendatory thereof and supplemental thereto, known as the "General Corporation Law of the State of Delaware"), do make, record and file this Certificate of Incorporation in writing and do hereby certify as follows, to-wit:

First: The name of the corporation is

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

Second: Its principal office in the State of Delaware is located at No. 7 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its

resident agent is the Corporation Trust Company of America, No. 7 West Tenth Street, Wilmington, Delaware.

Third, The business of this corporation will be conducted in and between the States of Louisiana, Arkansas, Texas, New Mexico, other States, and elsewhere; and the
745 nature of the business, or objects or purposes proposed to be transacted, promoted or carried on, are:

(a) To engage in and conduct the business of a common carrier for the forwarding and/or transportation for hire of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description, by any means whatsoever, and partly by one means of transportation and partly by another means of transportation, and/or by arrangement or contract with other persons, business concerns, corporations or common carriers.

(b) To establish and maintain a line of stages, motor coaches and motor trucks to be operated as common carriers; to own, maintain, conduct, operate, manage, buy, sell, lease, contract with and otherwise deal in truck, bus, stage or other transportation lines and systems for the forwarding, carrying and transportation of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description; to procure, own, operate under buy, sell, lease, mortgage or otherwise deal with the franchises, licenses, grants and certificates for the operation, control, conduct and/or management of bus, truck, stage or other transportation lines.

(c) To gather, receive, distribute and deliver baggage, mail, express, goods, wares and merchandise, and property of every kind and description; to contract with railroads, steamship lines, bus, stage, motor truck and motor bus and other transportation lines and systems, as well as with corporations, partnerships, business concerns of every kind, individuals and the public in general, for the carrying, transportation and/or forwarding of persons, baggage, mail, express, goods, wares and merchandise, and property of every kind and description.

(d) To engage in and carry on a general shipping, transportation and forwarding business, and to engage in and carry on a general transfer, express, baggage, trucking and contracting business; and to engage in and carry on any other business which may be conveniently conducted in conjunction therewith and re-

lating or incidental to any of the business, objects or purposes hereinbefore or hereinafter referred to.

(e) To own, acquire, lease, operate and maintain air ports, aeroplanes and other vehicles of aerial transportation, motor vehicles, trailers, trucks or semi-trailers or conveyances by whatsoever method propelled, and any necessary structures required, in the handling or transportation of passengers, baggage, mail, express, freight and other commodities.

746 (f) To engage in, conduct and carry on in all its various branches the business of forwarding and/or transportation for itself, or for others for hire, of passengers, baggage, mail, express, goods, wares and merchandise, and property of every kind and description, by means of motor coaches, motor buses, taxi-cabs, motorcycles, automobiles, aeroplanes, trucks and any and all other power propelled, drawn or driven vehicles and devices.

(g) To build, construct, lease, or otherwise acquire, maintain, own, utilize and operate buildings, storage houses, air-ports, hangers and garages for the storing, repairing, caring for and keeping for hire therein, motor coaches, motor buses, automobiles, taxi-cabs, motor cars, motorcycles, aeroplanes and vehicles of every kind, nature and description.

(h) To buy, own, sell as owners, or on consignment or commission; to deal in, operate, hold, own, convert, mortgage, assign, transfer, remodel, repair and invest in, and generally to trade, deal and traffic in motor coaches, motor buses, automobiles, taxi-cabs, motor cars, motor trucks, motorcycles, aeroplanes and other vehicles of every kind and description, including all attachments, accessories, materials, supplies, tools, engines, machinery, equipment, appliances, implements, articles or things pertaining thereto or useful in connection therewith.

(i) To construct, establish, equip, own, operate, maintain, and manage comfort stations, restaurants, grill rooms, lunch buffets, cafeterias, sandwich shops and other eating places; to grant to other persons or corporations the right or privilege to carry on any kind of business on the premises of the company on such terms as the company shall deem expedient or proper.

(j) To use or lease space for advertising purposes in or upon any and all vehicles owned, leased or other-

wise controlled or operated by it or by others and generally to use or lease any and all space in and upon the same for any other purpose or purposes from which it may find it advantageous to derive profit or income.

(k) To manufacture, purchase or otherwise acquire, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and real and personal property of every class and description.

(l) To merge or consolidate with any corporation or business concern, domestic or foreign, or to acquire by merger or consolidation, and pay for in stock or bonds of this corporation, or otherwise, the whole or any part of the good will, rights, franchises, assets and properties, and to undertake or assume the whole or any part of the obligations or liabilities, of any
747 person, firm, association or corporation.

(m) To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trademarks and trade names, relating to or useful in connection with any business of this corporation.

(n) To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, county, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership.

(o) To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

(p) To borrow or raise moneys for any of the purposes of the corporation and from time to time without limit as to amount, to draw, make accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or

pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

(q) To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted directly or indirectly.

(r) Without restriction or limit as to amount, to purchase or otherwise acquire, hold, own, mortgage, sell convey or otherwise dispose of real and personal property of every class and description, both within and without the State of Delaware.

(s) To have one or more offices to carry on all or part of its operations and business in the States of Delaware, New York, Louisiana, Arkansas, Texas, New Mexico and/or elsewhere.

748 (t) In general, to carry on, conduct and engage in any other business in connection with the foregoing, and to have and exercise all the powers which are now or hereafter may be conferred by the laws of Delaware upon corporations, and to do any and all the things hereinbefore set forth to the same extent as natural persons might or could do.

(u) The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes. This corporation may exercise all or any of the powers herein enumerated, and may conduct, engage in and transact all or any part of the business specified in any one or more or all of the clauses of this certificate of incorporation.

Fourth: The total number of shares of stock which the corporation shall have authority to issue is one thousand (1,000); all of such shares shall be without par value. Such stock may be issued by the corporation from time to time

for such consideration as may be fixed from time to time by the Board of Directors, and any and all shares so issued for which the consideration so fixed has been paid or delivered shall be deemed full paid stock and shall not be liable to any further call or assessments thereon, and the holder of such shares shall not be liable for any further payments in respect of such shares.

Fifth: The amount of capital with which the corporation will commence business is Ten Thousand Dollars ($10,000.00).

Sixth: The names and places of residence of the incorporators are as follows:

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Name	*Places of Residence*
C. S. Peabbles	Wilmington, Delaware
L. E. Gray	Wilmington, Delaware
H. E. Grantland	Wilmington, Delaware

Seventh: The corporation is to have perpetual existence.

Eighth: The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Ninth: Until the directors are elected at the first corporate meeting, the incorporators signing this certificate of incorporation shall have the direction of the affairs and of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscription to stock and to perfect the organization of the corporation. The number of directors of the Company shall be fixed from time to time by the by-laws, but shall not be less than five (5), and the following shall constitute the first Board of Directors:

Name	*Places of Residence*
William H. Williams	New York City
Matthew C. Brush	New York City
J. L. Lancaster	Dallas, Texas
J. B. Payne	Dallas, Texas
M. D. Cloyd	Dallas, Texas

Tenth: In furtherance, and not in limitation, of the powers conferred by statute, the Board of Directors is expressly authorized

To make and alter the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

750 To fix the times for the declaration of dividends; to set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created; to fix, determine and vary the amount to be reserved as working capital; to fix and determine what portion of the consideration received upon any issue of stock shall constitute capital and what portion, if any, shall constitute surplus and determine the use and disposition of any surplus or net profits of the Company; to authorize the payment to the directors, or any of them, of such fees and other compensation for attendance at meetings of the Board or for any Committee and/or for other services rendered to the Company as the Board of Directors in its discretion may approve.

By resolution or resolutions, passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the by-laws of the corporation shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, the Board of Directors shall have power and authority to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its Board of Directors shall deem expedient and for the best interest of the corporation.

The corporation may in its by-laws confer powers upon its Board of Directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

Eleventh: No transaction entered into by the Company shall be affected by the fact that any stockholders,
751 directors or officers of the Company are personally interested in it, and every stockholder, director or officer of the Company is hereby relieved from any disability that might otherwise prevent his contracting with the Company for the benefit of himself, or any firm, association or corporation in which he may be in any wise interested. And the fact that the stockholders and/or directors and/or officers of the Company are in whole or in part the same as those of any other corporation shall not in any way affect the validity or enforceability of any agreement or transaction between the two corporations.

Twelfth: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court or equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 3993 of the Revised Code of 1915 of said State, or on the application of trustees in dissolution or by any receiver or receivers appointed for this corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation,
752 as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

Thirteenth: The Stockholders, the Board of Directors, and Committees, shall have power to hold their meetings within the State of Delaware, or outside of the State of Delaware at such place or places as may be designated by

the by-laws, or in the case of the Board of Directors, by resolution of that Board or by consent of a majority of its members. The books of the company (subject to the provisions of the statutes) may be kept outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors.

Fourteenth: The corporation reserves the right to amend, alter, change, add to, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein upon stockholders, directors and officers, or either of them, are granted subject to this reservation.

We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make this certificate hereby declaring and certifying that the facts herein
753 stated are true, and accordingly have hereunto set our hands and seals this 21st day of June A. D. 1929.

In presence of
HERBERT E. LATTER

C. S. PEABBLES (Seal)
L. E. GRAY (Seal)
H. E. GRANTLAND (Seal)

State of Delaware, }
County of New Castle. } ss.:

Be it remembered, That on this 21st day of June A. D. 1929, personally came before me, the undersigned, a Notary Public in and for the State and County aforesaid, C. S. PEABBLES, L. E. GRAY and H. E. GRANTLAND, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

HERBERT E. LATTER,
Notary Public, within and for the County of New Castle, State of Delaware.

HERBERT E. LATTER
Notary Public
Appointed Feb. 23, 1929
State of Delaware
Term two years.

754 STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, CHARLES H. GRANTLAND, Secretary of State of the State of Delaware, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Certificate of Incorporation of "THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY", as received and filed in this office the twenty-first day of June, A. D. 1929, at 1 o'clock P. M.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Dover this twenty-fourth day of June, in the year of our Lord one thousand nine hundred and twenty-nine.

CHARLES H. GRANTLAND
Secretary of State

755 THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
BY-LAWS

As amended to June 7th, 1932

ARTICLE I.

Meetings of Stockholders

Section 1. *Annual Meetings.* The annual meeting of the stockholders of The Texas and Pacific Motor Transport Company (hereinafter called the "Company") for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held on the first Tuesday in June in each year, if not a legal holiday, and if a legal holiday then on the next succeeding week day not a legal holiday. If the election of directors shall not be held on the day designated herein for the annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the stockholders as soon thereafter as conveniently may be. At such meeting the stockholders may elect the directors and transact other business with the same force and effect as at an annual meeting, or any adjournment thereof, duly held.

Section 2. *Special Meetings.* A special meeting of the Stockholders for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation of the Company, may be called at any time by the Board of Directors, the Chairman of the Board of Directors, the President, or by stockholders holding not less

than twenty-five (25%) per cent of all shares of stock issued and outstanding and entitled to vote thereat.

Section 3. *Place of Meeting.* All meetings of the stockholders for the election of directors shall be held at the office of the Company in the City of Cleveland, Ohio, or in the City of Dallas, Texas, which place of meeting shall not be changed within sixty (60) days next before the day on which the election is to be held, and notice of such change shall be given to each stockholder in person or by letter mailed to him at his postoffice address last known to the Secretary. All other meetings of the stockholders shall be held at such places in the States of Delaware, Ohio, Louisiana, Arkansas, Texas, New Mexico and/or elsewhere as may be fixed from time to time by the Board of Directors, or shall be specified or fixed in the respective notices or waiver of notice thereof."

Section 4. *Notice of Meetings.* Except when otherwise expressly required by law or by the certificate of incorporation of the Company, written or printed notice of the time and place of each meeting of the stockholders shall be given to each stockholder of record entitled to vote at such meeting not less than fifteen (15) nor more than thirty (30) days before the day on which the meeting is to be held by delivering such notice to him personally or by mailing a copy thereof to him at his postoffice address last known to the Secretary of the Company. Every notice of a special meeting of stockholders, besides stating the time and place of the meeting, shall also state briefly the objects or purposes thereof, and no business other than that specified in such notice or germane thereto shall be transacted at a special meeting except with the consent in writing of all the stockholders entitled to vote at such meeting. Nevertheless, notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy, or who shall have waived notice thereof by mail, telegraph, cable or wireless, and, except where otherwise required by law, notice of any adjourned meeting of the stockholders shall not be required to be given.

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Section 5. *Quorum.* The holders of a majority of the shares of stock issued and outstanding, and entitled to vote thereat, represented in person or by proxy, shall be necessary to constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by law, by the certificate of incorporation or by these by-laws. In the absence of a quorum at any meeting

or an adjournment thereof, a majority of the shares of stock represented in person or by proxy and entitled to vote, may adjourn any meeting from time to time; provided, however, that in case of a meeting called to take action upon a proposed dissolution of the Company, such adjournment shall not at any one time be for less than eight (8) days. At any adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting as originally called.

Section 6. *Voting.* Each stockholder entitled to vote at a meeting shall have one vote in person or by proxy for each share of stock having voting rights recorded in his name on the books of the Company at the time of the meeting; provided, however, that after the first election of directors, no share of stock shall be voted at any election of directors which shall have been transferred on the books of the Company within thirty (30) days next preceding such election. Shares of its own capital stock belonging to the Company shall not be voted directly or indirectly. Persons holding shares of stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless the pledger in the transfer on the books of the Company shall have expressly empowered the pledgee to vote the same, in which case only the pledgee or his proxy may represent and vote said stock. At any meeting of the stockholders every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing signed by such stockholder and bearing a date not more than one year prior to said meeting, unless said instrument provides for a longer period. Except in special cases where otherwise made mandatory by statute or by the certificate of incorporation of the Company, all questions coming before meetings of the stockholders, at which a quorum is present, shall be determined by a majority vote of the stockholders present in person or by proxy and entitled to vote thereat, such stockholder being entitled to one vote for each share of stock registered in his name. All elections of directors shall be by ballot.

757 Section 7. *List of Stockholders.* It shall be the duty of the Secretary, or other officer of the Company who shall have charge of the stock ledger, to prepare and make a complete list of the stockholders entitled to vote at any ensuing election, arranged in alphabetical order, showing the residence of each and the number of voting shares held by each, and such list shall be filed in the office where

the election is to be held at least ten days before every election, and shall at all times, during the usual hours for business, and during the whole time of said election, be open to the examination of any stockholder. The original or duplicate stock ledger shall be the only evidence as to who are stockholders entitled to examine such list or the books of the Company, or to vote in person or by proxy at such elections.

Article II.

Board of Directors.

Section 1. *General Powers.* The Board of Directors shall manage the business affairs and property of the Company, direct its operations, take care that the duties required by law and these by-laws are faithfully performed by those under their authority, and perform all acts, and discharge all duties, necessary to the proper and efficient conduct of the business of the Company.

Section 2. *Number, Qualifications and Term of Office.* The number of directors shall be five (5), but the number may from time to time be increased by amendment of these by-laws. Directors need not be stockholders. Each of the directors shall hold office until the annual meeting held next after the election and until his successor shall have been elected and shall have qualified, or until his death, or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. *Resignation.* Any director may resign at any time by giving written notice to the Chairman of the Board of Directors or to the President of the Company. Such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof by the Chairman of the Board of Directors or the President of the Company, as the case may be; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. *Vacancies.* Except as provided by Section 10 of this Article II, and except as otherwise provided by law, if the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, increase in the number of directors, or otherwise, a majority of the remaining directors, though less than a quorum, may fill the vacancy or vacancies and each director so chosen shall hold office until the next annual election and until his successor shall be duly elected and qualified, unless sooner displaces.

758 Section 5. *Place of Meetings, etc.* Subject to the provisions of Section 6 of this Article II, and to the laws of Delaware, the Board of Directors may hold its meetings and keep the accounts and books of the Company in the City of Cleveland, Ohio, and/or in Dallas, Texas, and or elsewhere as may be fixed from time to time by the Board of Directors; provided, the original or a duplicate stock ledger containing the names and addresses of the stockholders and the number of shares held by them, respectively, shall, at all times, during the usual hours for business, be open to the examination of every stockholder at the office or place of business of the Company in the State of Delaware."

Section 6. *First Meeting.* As soon as practicable after each annual election of directors, the Board of Directors shall meet for the purposes of organization and of choosing the officers of the Company and for the transaction of other business. Such first meeting may be held at any time which shall be specified in a notice given as hereinafter provided for special meetings of the Board, or in a consent and waiver of notice thereof signed by all of the directors.

Section 7. *Regular Meetings.* Regular meetings of the Board of Directors shall be held at such time as the Board of Directors shall by resolution from time to time determine. Notice of regular meetings need not be given except of regular meetings at which it is proposed to alter or repeal these by-laws or to adopt one or more new by-laws, of each of which meetings a notice which shall state at least the substance of the change that it is proposed to make shall be given in the same manner as is required for special meetings.

Section 8. *Special Meetings; Notice.* Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board of Directors, the President, or by any three of the Directors. Except where otherwise required by law, notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business at least two days before the day on which the meeting is to be held, or shall be sent to him at such place by mail, telegraph, cable or wireless, or be delivered personally or by telephone not later than one day before the day on which the meeting is to be held. Any meeting of the Board of Directors shall be a legal meeting without any notice thereof having been given if all the directors shall be present thereat or if notice thereof shall be waived either before or after such meeting in writing or by tele-

graph, cable or wireless by all absentees therefrom, provided a quorum be present thereat. Notice of any adjourned meeting need not be given.

Section 9. *Quorum and Procedure.* A majority of the directors in office at the time of any regular or special meeting of the Board of Directors shall be present in person at such meeting in order to constitute a quorum for the transaction of business, and, except as specified in Section 4 of this Article II, and Section 4 of Article IV, of these by-laws, and except also in special cases where other provision is made by statute, the act of a majority of the directors present at any such meeting, at which a quorum
759 is present, shall be the act of the Board of Directors. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum be had. The directors shall act only as a board and the individual directors shall have no power as such.

Section 10. *Removal of Directors.* Any director may be removed at any time by the affirmative vote of the holders of a majority of all the shares of stock issued and outstanding and entitled to vote for the election of directors, given at a special meeting of such stockholders called for the purpose; and the vacancy in the Board of Directors caused by such removal shall be filled by such stockholders at such meeting, or, if the stockholders shall fail to fill such vacancy, by the remaining directors, though less than a quorum.

Section 11. *Compensation.* Each director shall receive Twenty Dollars for every meeting of the Board, or of the Executive Committee, when a member thereof, which he shall attend, and his necessary traveling expenses.

Section 12. *Other Powers.* In addition to the powers and authorities expressly conferred upon it by these by-laws, the Board of Directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws directed or required to be exercised by the stockholders.

Article III.

Executive Committee.

Section 1. The Board of Directors, at its first meeting after the annual meeting of the Stockholders for election of Directors, or as soon thereafter as practicable, shall elect an Executive Committee, consisting of three members of the Board, one of whom shall be the Chairman of the Board

of Directors. The Chairman of the Board shall be ex-officio Chairman of the Committee. In the absence of the Chairman of the Board of Directors, any member may preside at meetings of the Committee. Members of the Executive Committee may be removed therefrom at any time at the pleasure of the Board. Vacancies in the Committee shall be filled by election from the Directors, and at all times it shall be the duty of the Board of Directors to keep the membership of such Committee full. The Secretary of the Company shall give notice of all meetings of the Executive Committee, and act as Secretary of the Committee. The Chairman of the Board may, at any time, call a meeting of the Committee, and shall do so when requested by a member thereof, and such meeting may be held in the City of Cleveland, Ohio, and/or in the City of Dallas, Texas, and/or elsewhere, on such notice as the Chairman shall deem sufficient. The Executive Committee shall, in the intervals between the meetings of the Board of Directors, manage and direct through the Chairman of the Board of Directors, the business affairs of the Company in such manner as it shall deem best for the interests of the Company, in all cases in which specific directions shall not have been
760 given by the Board, or authority vested in other executive officers of the Company; but no such action shall be valid unless approved by at least a majority of the Committee. The Committee will make its own rules of procedure, and shall keep a record of its proceedings, and shall submit the same to the Board of Directors at its regular meetings or at any special meetings, when thereunto requested by the Board of Directors.

If a quorum be not present at any meeting, the member or members of the Committee present may adjourn the meeting from time to time until a quorum shall attend, or the member or members present whether constituting a quorum or not, at his or their option, shall have the power to appoint a substitute or substitutes from the members of the Board of Directors not members of the Committee to act during the temporary absence of any member or members of the Committee.

Article IV.

Officers.

7 Section 1. *Number.* The Executive Officers of the Company shall consist of a Chairman of the Board and a President, both of whom shall be chosen from among the direc-

tors; also one or more Vice Presidents, a Secretary and a Treasurer, who may be, but need not be, members of the Board of Directors; also one or more Assistant Secretaries and one or more Assistant Treasurers, who may be, but need not be, members of the Board of Directors.

Section 2. *Election, Term of Office and Qualifications.* The officers of the Company shall be chosen annually by the Board of Directors at the first meeting thereof held after such annual meeting of stockholders. Each officer, except such officers as may be appointed in accordance with Section 3 of this Article IV, shall hold office until his successor shall have been duly chosen and shall qualify, or until his death, or until he shall resign, or shall have been removed in the manner hereinafter provided.

Section 3. *Subordinate Officers, etc.* In addition to the officers mentioned in Section 1 of this Article IV the Company may have such other officers, agents and factors as may be deemed necessary, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these by-laws or as the President may from time to time determine. The Board of Directors may delegate to any officer the power to appoint any such additional officers, or agents or factors.

761 Section 4. *Removal.* Any officer of the Company may be removed either with or without cause, at any time, by resolution adopted by a majority of the whole Board of Directors at a special meeting of the Board called for that purpose, or, except in the case of any officer elected or appointed by the stockholders or by the Board of Directors, by any committee or superior officer upon whom such power of removal may be conferred by the Board of Directors.

Section 5. *Resignations.* Any officer may resign at any time by giving written notice of his resignation to the Board of Directors, or to the Chairman of the Board of Directors, the President, or to the Secretary of the Company. Any such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 7. *The Chairman of the Board of Directors.* The Chairman of the Board shall, if present, preside at all

meetings of the stockholders and of the Board of Directors and shall be ex-officio as members of all Committees of the Board of Directors. The Chairman of the Board of Directors shall have general supervision over the business of the Company and over its several officers, subject, however, to the control of the Board of Directors and of the Executive Committee.

Section 8. *The President.* The President shall be the chief executive officer of the Company and shall have general and active management and direction of its business and general supervision thereof and over its officers, agents, factors and employees, subject, however, to the control of the Board of Directors, the Executive Committee and the Chairman of the Board of Directors. In the absence of the Chairman of the Board of Directors, the President shall preside at all meetings of the Stockholders and of the Board of Directors and (if he shall be a member thereof) of the Executive Committee. He may sign, with the Secretary or Treasurer or any other proper officer of the Company thereunder authorized by the Board of Directors, certificates for shares of the capital stock of the Company. He may, subject to control of the Board of Directors, execute on behalf of the Company any deeds, mortgages, bonds, contracts or other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these by-laws to some other officer or agent of the Company or shall be required by law otherwise to be signed or executed; and, in general shall have such other powers and perform such other duties as are incident to the office of the President and as from time to time may be assigned to him by the Board of Directors or by the Executive Committee.

762 Section 9. *The Vice-President.* The Vice-President shall have such authority and such powers and duties as shall from time to time be prescribed by the Board of Directors, or, unless otherwise directed, by the Chairman of the Board of Directors or by the President.

Section 10. *The Treasurer.* The Treasurer shall be the financial officer of the Company and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company; shall deposit all moneys and other valuables in the name and to the credit of the Company in such depositories as may be directed by the Board of Directors; and subject to control of the Board of Directors, shall disburse the funds of the Company, taking prop-

er receipts therefor, and shall render to the Board of Directors, the Chairman of the Board of Directors and the President whenever they shall require it, a full account of all his transactions as Treasurer, and, in general, shall have such other powers and shall perform such other duties as are incident to the office of Treasurer and as from time to time may be assigned to him by the Chairman of the Board of Directors, the President or the Board of Directors. Any duty required to be performed by the Treasurer may be performed by any Assistant Treasurer as may be directed by the Chairman of the Board of Directors or the President. If required by the Board of Directors, the Treasurer (or any Assistant Treasurer) shall give the Company a bond in form, and in a sum with surety, satisfactory to the Board of Directors for the faithful performance of the duties of his office and the restitution to the Company in the case of his death, resignation or removal, of all books, papers, vouchers, money and other property of whatever kind in his possession belonging to the Company.

Section 11. *The Secretary.* The Secretary shall attend meetings of the Board of Directors, the Executive Committee and stockholders, when requested so to do, and act as clerk thereat and record all events and keep minutes of all proceedings in a book to be kept for that purpose; he shall keep in safe custody the seal of the Company and affix the seal to any instrument requiring the same; he shall see that proper notice is given of all meetings of the Board of Directors, the Executive Committee and of the Stockholders of the Company; and, in general, shall have such other powers and perform such other duties as are incident to the office of Secretary, and, as may be assigned to him by the Chairman of the Board of Directors, the President, or the Board of Directors or the Executive Committee. Any duty required to be performed by the Secretary may be performed by any Assistant Secretary as may be directed by the Chairman of the Board of Directors or by the President.

Article V.

Offices.

Section 1. *Principal Office.* The principal office of the Company in the State of Delaware shall be in the City of Wilmington, County of New Castle, and the Company shall maintain at said address a resident agent in charge thereof.

763 Section 2. *Other Offices.* The Company shall also have an office in the City of Cleveland, Ohio, and/or in the City of Dallas, Texas, and/or at such other place or places as the Board of Directors may designate from time to time or the business of the Company may require.

Article VI

Seal

The Board of Directors shall provide a corporate seal, which shall be circular in form with the words "The Texas and Pacific Motor Transport Company" around the outer rim, and words and figures showing that the Company was incorporated in the State of Delaware in the year 1929.

Article VII

Amendments

These by-laws may be altered or amended or repealed by the affirmative vote of the holders of a majority of the shares of stock issued and outstanding and entitled to vote at any regular or special meeting of the stockholders, or by the affirmative vote of a majority of the Board of Directors at any regular or special meeting of the Board, provided notice of the proposed alteration, amendment or repeal be contained in the notice of the meeting. No change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held.

764 *Statement B-1-(a)-4*

SCHEDULES

NORTHBOUND

		Occasional Trip
Leave Monahans	3:00 AM	
Arrive Wink	3:50 AM	
Leave Wink	3:55 AM	
Arrive Kermit	4:00 AM	
Leave Kermit	4:05 AM	
Arrive Cheyenne	4:25 AM	
Leave Cheyenne	4:30 AM	
Arrive Texas-New Mexico State Line	4:45 AM	
Leave Texas-New Mexico State Line	4:45 AM	6:30 PM
Arrive Jal	5:00 AM	6:45 PM
Leave Jal	5:10 AM	6:55 PM
Arrive Eunice	6:00 AM	7:40 PM
Leave Eunice	6:10 AM	7:50 PM
Arrive Hobbs	7:00 AM	8:30 PM
Leave Hobbs	8:00 AM	
Arrive Lovington	9:00 AM	

SOUTHBOUND

Leave Lovington	10:30 AM			
Arrive Hobbs	11:30 AM			
Leave Hobbs	11:35 AM	8:00 AM		9:00 PM
Arrive Eunice	12:35 PM	8:50 AM		9:55 PM
Leave Eunice	12:30 PM	8:51 AM		10:00 PM
Arrive Jal	1:20 PM	9:30 AM		10:50 PM
Leave Jal	1:30 PM	9:31 AM		10:55 PM
Arrive Texas-New Mexico State Line	1:45 PM	9:45 AM		11:10 PM
Leave Texas-New Mexico State Line	1:45 PM	9:45 AM		11:10 PM
Arrive Cheyenne	2:00 PM	10:00 AM		
Leave Cheyenne	2:05 PM	10:01 AM		
Arrive Kermit	2:25 PM	10:20 AM		
Leave Kermit	2:30 PM	10:22 AM		
Arrive Wink	2:40 PM	10:30 AM		
Leave Wink	2:55 PM	10:31 AM	8:00 AM	
Arrive Monahans	3:40 PM	11:20 AM	8:50 AM	1:10 AM

The schedules are predicated on the arrival and departure times of Texas and Pacific Railway Company trains, eastbound and westbound, from Monahans, Texas, with which applicant's truck service is co-ordinated. When trains are late trucks are held a reasonable length of time at Monahans.

765 *Statement C-2*

There is a heavy volume of less-than-carload traffic moving between such distributing centers as Houston, Dallas, Forth Worth, Abilene, Midland, Odessa, El Paso, on the one hand, and points along applicant's route, on the other. The most economical and expeditious handling of such traffic is the transportation service now afforded by applicant in conjunction with The Texas and Pacific Railway Company and its connections. The total volume of traffic to the points along applicant's route is not sufficient to justify the operation of a daily train, by the Texas-New Mexico Railway Company and it can not render the prompt service which is being rendered by applicant, and could not even if it operated a daily train schedule from Monahans north. The time in transit on shipments moving by rail and over applicant's truck line is also substantially less than the time in transit by all rail or all truck transporfation. Adequate station facilities have been arranged for by applicant at all important receiving points, and regularly employed agents are on hand to care for the needs of the public, while truck lines operating in the territory do not provide adequate, sufficient facilities and personnel. The public needs prompt and expeditious service by a strong, financially responsible transportation agency with adequate station facilities and responsible agents. There is no through one-line truck service from the more important shipping points to the territory served by applicant. Applicant has been granted a certificate of necessity and convenience by the Railroad Commission of Texas, an-

thorizing it to serve that portion of the route lying within the State of Texas, with the exception that applicant is restricted from rendering local intrastate service from Monahans to Wink. Such restriction, however, does not apply to through shipments moving into Monahans via rail. Applicant is also authorized to operate in New Mexico by the State Corporation Commission of New Mexico.

Since applicant's service has been inaugurated there has been a substantial and steady increase in the amount of traffic handled because of applicant's superior service.

766 *Statement D-1*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

General Balance Sheet

January 1, 1936

ASSETS.

Investments:		
501 Organization expenditures		$ 1,121.62
502 Investment in property and equipment		11,862.51
Total investments		12,984.13
Current Assets:		
506 Cash		14,415.02
509 Traffic balances receivable		5,177.22
510 Net balances receivable from agents		4,055.91
511 Miscellaneous accounts receivable		2,899.34
512 Material and supplies		1,309.18
515 Other current assets		45.85
Total current assets		27,902.52
Unadjusted Debits:		
521 Rents and insurance premiums paid in advance		1,722.47
522 Taxes paid in advance		165.39
525 Other unadjusted debits		2,196.62
Total unadjusted debits		4,084.48
Total Assets		$44,971.13

LIABILITIES

Stock:	
528 Capital stock	$10,000.00
Current Liabilities:	
532 Traffic balances payable	8,554.23
533 Audited accounts and wages payable	3,406.32
534 Miscellaneous accounts payable	14,613.55
540 Tax liability	1,970.88
542 Other current liabilities	882.64
Total current liabilities	29,427.62
Unadjusted Credits:	
549 Accrued depreciation—Equipment	493.11
551 Other unadjusted credits	254.26
Total unadjusted credits	747.37
Corporate Surplus:	
554 Profit and loss—Balance	4,796.14
Total Liabilities	$44,971.13

767 *Statement D-2*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

Highway Truck Operations

Monahans, Texas to Lovington, New Mexico

Income Account

Period, September 25, 1935 to December 31, 1935

Operating Revenues:	
Freight	$8,402.06
Operating Expenses:	
Maintenance	819.10
Traffic	50.13
Transportation	3,422.73
General	443.45
Total operating expenses	4,735.41
Net revenue from operations	3,666.65
Tax accruals	876.71
Operating income	2,789.94
Deductions from Operating Income:	
Interest on unfunded debt	9.86
Net Income	$2,780.08

768 *Statement D-3*

Applicant's operating officers are men who have been engaged in transportation work over a period of many years. The officers and agents of The Texas and Pacific Railway Company are in the main also officers and agents of Applicant. The particular physical operations covered by this application are supervised by Mr. J. B. Payne, Jr., who has had 6 years of successful experience in operating motor trucks. Applicant's local agents are also agents of Texas-New Mexico Railway Company and have had many years experience in attending to the handling of shipments, c. o. d. remittances, quotation of rates, receipts of claims, advising as to schedules, etc.

Mr. T. E. Huffman, General Freight Agent, has had more than twenty years' experience in the handling of freight and traffic matters for The Texas and Pacific Railway Company, and for the past six years has specialized in the field of merchandise or less-than-carload traffic, being familiar with the needs of the shippers and receivers thereof and the schedules and operating conditions necessary to fulfill same.

769 Interstate Commerce Commission.

No. MC 50544.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
COMMON CARRIER APPLICATION.

Report and order recommended by Joint Board No. 33, composed of Robert Valdez of New Mexico and C. V. Terrell of Texas.
Served July 3, 1937.

NOTICE TO THE PARTIES.

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest, within 20 days from date of service shown above. Otherwise at the expiration of said 20-day period the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

770 Interstate Commerce Commission.

No. MC 50544.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, COMMON CARRIER APPLICATION.

Submitted ..... Decided .....

Public convenience and necessity found to require continuance of operation by applicant as a common carrier by motor vehicle of commodities generally in interstate or foreign commerce between Monahans, Tex., and Lovington, N. Mex.

R. S. Shapard, W. O. Reed, and Samuel W. Lancaster for applicant.

Frank A. Leffingwell, Carl L. Phinney, Carl Callaway, Rollo E. Kidwell, J. E. Farrow, Frank H. Rawlings, J. M. Burford, J. R. McClurken, W. S. Cornell, Ed. P. Byars, and E. W. Moeller for interveners and others.

Report and Order

RECOMMENDED BY JOINT BOARD No. 33, COMPOSED OF ROBERT VALDEZ OF NEW MEXICO AND C. V. TERRELL OF TEXAS.

By application filed February 10, 1936, The Texas and Pacific Motor Transport Company, whose business address is 1625 Elm Street, Dallas, Tex., seeks a certificate of public convenience and necessity, authorizing operation as common carrier by motor vehicle in the transportation of commodities generally in interstate or foreign commerce between Monahans, Tex., and Lovington, N. Mex., over Texas Highway 32 and New Mexico Highway 18. Intermediate points are Wink, Kermit, Cheyene, Jal, Eunice, and Hobbs.

Pursuant to the provisions of the Motor Carrier Act, 1935, the application was referred to Joint Board No. 33 for hearing. Hearing has been held.

Applicant is a wholly owned subsidiary of The Texas and Pacific Railway Company. It is a Delaware
771 corporation duly authorized to engage in business in the states of Texas and New Mexico. It holds a Certificate of Necessity and Convenience issued to it by the Railroad Commission of Texas authorizing operations as a common carrier by motor vehicle between Monahans and the Texas-New Mexico State Line; and holds a permit issued by the State Corporation Commission of New Mexico authorizing it to engage in interstate common carrier service between Lovington and the Texas-New Mexico

State Line. The route covered by the application parallels the line of railroad of the Texas-New Mexico Railway Company, which is also a subsidiary of The Texas and Pacific Railway Company.

At the outset, applicant was in doubt as to whether or not operations of The Texas and Pacific Motor Transport Company are those of a contract carrier or those of a common carrier. The Board ruled that applicant will be considered a common carrier desiring a certificate of public convenience and necessity.

Upon consideration of the evidence, the Board concludes that the operations of applicant are those of a common carrier. The record shows that the applicant in its own name holds itself out to the public to carry for anybody any kind of commodity that is transportable by truck. It appears that the applicant issues bills of lading and expense bills to shippers and receivers; that it owns and operates trucks; that it pays its own claims and bills; and that it contracts directly with local draymen for pick-up and delivery service. While, as stated, applicant is a subsidiary of The Texas and Pacific Railway Company, it is a separate organization and a separate corporation. The truck service covered by the application is an operation which was not subject to the provisions of Part I of the Interstate Commerce Act, and, therefore, applicant falls within the description of "a common carrier by motor vehicle" as such carriers are defined in Section 203 of the Motor Carrier Act.

Our holding that applicant is a common carrier is in line with the tentative report of the Commission in
772 No. MC-2600, Application of Earl W. Slagle. The statutory definition does not differ substantially from the common law definition of a common carrier.

The Texas-New Mexico Railway Company, hereinafter called the Texas-New Mexico, started operations from Monahans into Lovington on May 6, 1930. There were no truck lines along this route. The only existing truck line at that time so far as the records disclose operated only between Lubbock and Lovington via Bronco and Tatum. Hobbs-Wink Truck Line started operations between Hobbs and Wink soon after December 31, 1934. This line is operated by one E. B. Merton of Wink, Tex. So far as the records disclose, operations of Hobbs-Wink Truck Line have been irregular, unbusinesslike, and not at all satisfactory. Pecos Quickway Truck Line operates between Wink and Monahans. Cecil White Truck Line operates

from Hobbs to Lovington but did not begin to serve from Hobbs to Jal and intermediate points until April 24, 1936. The applicant commenced truck operations over the route involved on September 25, 1935.

This fact is brought out. That prior to the inauguration of applicant's operations, the service from Dallas and Fort Worth to certain points, for instance Hobbs and Wink, was second day delivery; third and fourth morning deliveries to other stations with a multiple interchange between various truck lines. We must bear in mind the origin of practically all the volume of tonnage into the territory served and proposed to be served originates in or moves through Fort Worth and Dallas. The applicant has improved that service from twelve to twenty-four hours since commencing truck operations and such service is regular and dependable. Even though freight is interchanged between Hobbs-Wink Truck Line, Gillette, Dalby Motor Line, Merchants Fast Motor Line, Cecil White Truck Line and the Sunset Truck Line, the coordination of schedules along the route is such that shipments are frequently retarded from twenty-four to forty-eight hours either via Lubbock or via Monahans from Dallas and Fort Worth to Lovington, Hobbs, Eunice, and Jal. While these truck lines claim that their service is now as fast as applicant's, the shippers' experience does not bear them out.

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The record shows that railroad service has been unsatisfactory in the handling of less-than-carload shipments. The Texas-New Mexico Railway Company is essentially a branch line and its train service is not regular or frequent enough to give service as dependably or as fast as applicant is rendering. Applicant's service is twenty-four hours better than all rail service.

Mail service to the general public has been bettered. Prior to the inauguration of the applicant's operations there was one mail service a day which departed from Monahans at 10:00 a. m., going to Lovington and returning at 8:00 p. m. Applicant now gives mail service twice a day each way between Monahans and Lovington. The result has been an improvement of from twelve to twenty-four hours in both inbound and outbound mail service.

Several witnesses testified that practically all their freight received along the proposed route was less-than-carload. It certainly was a convenience to their needs by having shipments delivered regularly and promptly. Much of the freight goes to consignees who have no place of business in town and who must come in from the oil

fields to receive it. It is necessary for them to have a carrier with adequate depot facilities to store their freight; otherwise they must try to meet trucks as they come through or go to some other town to get it. Only applicant has adequate facilities at all points.

Applicant's service relieves the local trains of handling less-than-carload tonnage, and train service is thereby improved considerably.

The evidence shows that applicant's tonnage has steadily increased and that it is much greater than the less-than-carload tonnage formerly handled by the Texas-New
774 Mexico Railway. At the same time the tonnage of competing truck lines appears to have increased and we find that traffic is heavy enough to support applicant's and all other existing operations.

One of the policies of Congress, as set forth in Section 202 (a) of the act, is to "improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers." Operations of the applicant in this particular case is certainly in line with the declared policy of Congress.

In conclusion it has been shown that the service applicant seeks authority to continue, effected a substantial improvement in all transportation to and from points enroute; that it is in the people's interest to supplement the railroad service afforded by applicant's affiliates, the Texas and Pacific Railway Company and the Texas-New Mexico; that applicant's operation is giving the public expedited service in conjunction with its adequate terminal facilities; mail service has been greatly improved and will so continue to be improved only through applicant's operation; that the express and carload service of the Texas-New Mexico has been materially improved by relieving the trains of handling less-than-carload freight; the competitive service and ability of applicant's competitors to compete has not been impaired through applicant's operations, but on the contrary, quality of competitive service has greatly improved and competitors' facilities for handling traffic have been substantially increased.

There is sufficient traffic in the territory to adequately maintain all existing transportation agencies. A review of the facts compels the conclusion that the industry of the territory would greatly suffer if applicant should be compelled, for any reason, to cease operations.

Therefore, the Board recommends that a certificate of public convenience and necessity be granted the ap-

775 plicant as applied for, and further recommends that an appropriate order be entered.

Since the hearing, the Commission has issued its rules governing meetings and procedure of Joint Boards which provide that a party may amend pleadings except where the issues would be unduly broadened and except where they would be so narrowed as to deprive the Joint Board of jurisdiction. Inasmuch as the application in this case contains the same facts which are required to be shown in contract carrier applications, there would be no broadening of the issues in considering the application as one for a contract carrier permit if the facts warrant a conclusion that applicant is a contract carrier. The same considerations and facts which cause us to conclude that applicant's operations are and will be required for public necessity and convenience would compel us to conclude that applicant's operations are consistent with the public interest and the policy declared in Section 202 (a) of the Motor Carrier Act. As stated, we find that applicant is a common carrier and is entitled to a certificate, but, if upon the facts it be held that we have erred in holding applicant to be a common carrier, the Board recommends that a contract carrier permit authorizing the operations covered by the application be issued to applicant.

ROBERT VALDEZ (Signature)
C. V. TERRELL (Signature)

776 Recommended by Joint Board No. 33, composed of Robert Valdez of New Mexico and C. V. Terrel of Texas.

ROBERT VALDEZ (Signature)
C. V. TERRELL (Signature)

Order

Of the INTERSTATE COMMERCE COMMISSION, Division 5, effective on the day of A. D. 1937.

No. MC 50544.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, COMMON CARRIER APPLICATION.

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by Joint Board No. 33, which Board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is

hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon full compliance with all requirements of Sections 215 and 217 of the Motor Carrier Act, 1935, and with the rules and regulations promulgated by this Commission thereunder, a certificate of public convenience and necessity be issued to the Texas and Pacific Motor Transport Company authorizing it to operate in interstate or foreign commerce as a common carrier by motor vehicle of commodities generally between Monahans, Tex. and Lovington, N. Mex., and intermediate points, over Texas Highway 82 and New Mexico Highway 18.

It is further ordered, That the above described certificate be issued upon the condition that the operations authorized therein shall be carried on in accordance with the provisions of the Motor Carrier Act, 1935, and with all applicable rules, regulations, and requirements relating to common carriers by motor vehicle issued by the Commission under said Act.

By the Commission, division 5.

W. P. BARTEL
Secretary

(SEAL)

779 *Interstate Commerce Commission.*

No. MC-50544.

TEXAS & PACIFIC MOTOR TRANSPORT COMPANY,
COMMON CARRIER APPLICATION.

Submitted August 12, 1937.

Decided March 2, 1939

Public convenience and necessity found to require continuance of operation by applicant as a common carrier by motor vehicle of general commodities, over a specified route, between Monahans, Tex. and Lovington, N. Mex. Certificate granted on conditions.

R. S. Shapard, W. O. Reed, and Samuel W. Lancaster for applicant.

Frank A. Leffingwell, J. E. Farrow, Ed. P. Byars, E. S. Mueller, and Dick Dixon for interveners in behalf of applicant.

Carl L. Phinney, Carl Callaway, and Rollo E. Kidwell for protestants.

Frank H. Rawlings, J. M. Burford, J. R. McClurkan, and W. S. Cornell for others.

Report of the Commission

DIVISION 5, COMMISSIONERS EASTMAN, LEE, AND ROGERS.

BY DIVISION 5:

The recommended order of the joint board, to which no exceptions were filed, was stayed by us.

By application filed February 10, 1936, The Texas and Pacific Motor Transport Company, a corporation with headquarters at Dallas, Tex., seeks a certificate of public convenience and necessity authorizing continuance of its operations as a common carrier by motor vehicle of general commodities, in interstate or foreign commerce, between Monahans, Tex., and Lovington, N. Mex., serving all intermediate points and Wink, Tex., and Eunice, N. Mex., offroute points. The operations are conducted over a regular route, approximately 107 miles long, extending northward from Monahans over Texas Highway 82 to the Texas-New Mexico State line and thence to Lovington over New Mexico Highway 18.

The Dallas Chamber of Commerce, Fort Worth Freight Bureau, Fort Worth Chamber of Commerce, and certain shippers located at points on applicant's route and at Fort Worth, Dallas, and Houston, Tex., intervened in support of the application; and the Common Carrier Motor Freight Association and certain motor carriers which operate in Texas and New Mexico oppose it.

Applicant is a wholly-owned subsidiary of The Texas and Pacific Railway Company, and its route between Monahans and Lovington parallels the right of way of the Texas-New Mexico Railway Company, which is also a subsidiary of the Texas and Pacific Railway Company. Ap-
780 plicant holds a certificate of convenience and necessity from the Texas Railroad Commission authorizing operations as a common carrier by motor vehicle between Monahans and the Texas-New Mexico State line; and it holds a permit issued by the New Mexico Corporation Commission authorizing it to engage in common carrier service between the Texas-New Mexico State line and Lovington.

The Texas-New Mexico was constructed primarily to serve the oil fields in Winkler County, Tex., and Lea County, N. Mex. It began operations in May 1930, and depends mainly on the oil fields for its traffic. Consequently, the amount of traffic transported by it has varied with the fluctuation of drilling activities in the oil fields. During the period January 1, 1934, to February 10, 1936, it

operated only a mixed passenger-freight train on alternate days.

Very little less-than-carload traffic originates at points on the Texas-New Mexico; the movement of such traffic is preponderantly to these points. Most of this inbound traffic originates at, or moves through, Fort Worth and Dallas. On September 25, 1935, applicant began the transportation of commodities moving at less-than carload rates between Monahans and Lovington. Its schedules were coordinated with that of the train of the Texas and Pacific Railway Company which transports less-than-carload freight from Fort Worth and Dallas to Monahans. Because of this coordination, the movement of such less-than-carload traffic through Monahans to points on the Texas-New Mexico was expedited. Traffic to points on the Texas-New Mexico improved in the latter part of 1935 and the early part of 1936 to an extent which justified the operation of a mixed passenger-freight train in each direction over its line every week day. This daily service was inaugurated February 10, 1936. Since applicant's service was instituted, however, the Texas-New Mexico has not transported by rail any freight moving at less-than-carload rates. The less-than-carload traffic has increased steadily and in May 1936 it amounted to 1,850,348 pounds, and increase of 1,115,030 pounds over that in the same month of the preceding year.

Applicant maintains local interstate rates between points on its route between Monahans and Lovington, and it participates in joint rates with rail lines. This participation in joint rates is restricted to less-than-carload traffic where the Texas-New Mexico elects to substitute highway motor vehicle service in lieu of its rail service. Applicant does not now participate in joint rates with other motor carriers, and is averse to entering into any arrangements with them for joint motor-carrier service.

At present the Texas and Pacific Railway Company's train which transports general merchandise westbound from Dallas and Fort Worth leaves Dallas about 8:30 p. m. and arrives at Monahans from 3 to 4 p. m. the following day. At Monahans, less-than-carload shipments are transferred to applicant's trucks, which depart as soon as they are loaded, usually about 6 p. m. Some trucks go to Wink, some to Hobbs, N. Mex., and others to Lovington. The trucks to Lovington, the most distant point, arrive about 11:30 p. m. and the shipments are available for delivery early the following morning. If the westbound train is

late, the trucks await its arrival and are still able to transport the shipments to points along the route for delivery the next morning. At destination, the shipments are either held for the consignees or delivered by local truck-
781 men who are under contract with applicant. The schedule of the northbound train of the Texas-New Mexico is coordinated with that of one of the westbound passenger trains of the Texas and Pacific Railway Company. This train of the Texas-New Mexico generally leaves Monahans about noon and does not arrive at some of the stations at a time which would permit the delivery of less-than-carload shipments the same day. The service accorded by applicant, therefore, advances the delivery of such shipments in some instances by a full day over all-rail service.

The agents at Texas-New Mexico stations act as joint agents for the railway and applicant. Applicant also uses the stations, warehouses, and other facilities jointly with the railway at these points. Applicant has contracts with the Texas and Pacific Railway Company and the Texas-New Mexico governing the relations between the companies, the division of joint revenue, and payments to the Texas-New Mexico for the use of its facilities. The exact method of dividing this revenue appears to be somewhat complicated, and applicant's accounting witness was unable to explain it clearly. It does appear, however, that in addition to other payments, the Texas and Pacific Railway Company receives 90 percent of applicant's net income. Applicant asks that its application be treated as one for a permit rather than a certificate, if it be found that it is a contract carrier by reason of its relations with the Texas and Pacific Railway Company and the Texas-New Mexico. Shipments handled by applicant move under rates published in common carrier tariffs, to which it is a party, and we conclude that it is a common carrier and that a certificate is the form of authority required.

Applicant has a contract with the Post Office Department for the transportation of mail between Monahans and Lovington. One of the nine trucks which are operated between Monahans and Lovington is used exclusively for this service. It also transports mail in the trucks used for the transportation of general commodities. The Motor Carrier Act, 1935, does not apply to vehicles used exclusively in the transportation of mail, and, in our opinion, special authorization is not required for the transportation of mail by common or contract carriers in the same vehicle with property moving in interstate or foreign commerce.

Interveners in behalf of applicant desire the continuance of the service under consideration because it has effected a substantial improvement in all transportation service to points on applicant's route. The motor carriers which compete with applicant have few freight stations at these points, and the maintenance of joint rail-and-truck stations by the Texas-New Mexico and applicant is a convenience to shippers and consignees, especially those located outside the limits of the points served. The latter shippers and consignees may tender less-than-carload shipments for transportation and call for delivery of such shipments at the joint stations at their convenience.

Protestants contend that present motor carrier facilities, other than applicant's, are sufficient for the performance of adequate transportation service, in interstate or foreign commerce, between points on applicant's route, and between these points, on the one hand, and points in Texas, on the other. There is no single common carrier by motor vehicle of general commodities, other than applicant, operating over the entire route between Monahans and Lovington. Pecos Quickway Truck Line and Sunset
782 Truck Company operate between Monahans and Wink; Wink-Hobbs Truck Line operates between Wink and Hobbs; and Cecil White Truck Line operates between Hobbs and Lovington and between Hobbs and Jal, N. Mex. Service was not instituted by Cecil White Truck Line between Hobbs and Jal until April 1936.

A number of through motor carrier routes can be formed between points on applicant's route, on the one hand, and Dallas, Fort Worth, and other points in Texas, on the other. All-truck shipments from Dallas to Hobbs can be transported over Merchants Fast Motor Line from Dallas to Stamford, Tex., thence Dalby Motor Line to Lubbock, Tex., and Cecil White Truck Line beyond; or over Merchants Fast Motor Line to Abilene, Tex., thence Snyder Transfer Company to Lubbock, and Cecil White Truck Line beyond. Merchants Fast Motor Line and its connecting carries transport daily an average of 20,000 pounds of freight to points on applicant's route, half of which is consigned to Hobbs. Shipments over these routes leave Dallas at 6 p. m. and, if connections are made, arrive at Hobbs at 4 p. m. the next day. Shipments to Wink and other points served by Pecos Quickway Truck Line are transported by Merchants Fast Motor Line from Dallas and Fort Worth to Odessa, Tex., and Pecos Quickway Truck Line beyond. Under this arrangement, shipments are delivered

early the second afternoon. Another route is formed by Gillette Motor Transport from Dallas to Monahans and connecting motor carriers beyond. It is doubtful, however, if any substantial amount of traffic to points north of Monahans is transported over the last-named route.

The record warrants the conclusion that public convenience and necessity require the furnishing by applicant over the considered route of service supplementary and auxiliary to, and coordinated with, rail service, but it does not establish a need for service by applicant which is not required in such coordinated operations. In *Kansas City S. Transport Co., Inc., Common Carrier Application*, 10 M. C. C. 221, where in a certificate was granted to a rail subsidiary to conduct a motor vehicle operation over routes paralleling rail lines of the parent rail carrier, we limited the service to the auxiliary or supplementary to rail service and attached certain specific conditions in furtherance of that limitation and to prevent duplication of, and competition with, then-existing highway service. One of those conditions restricted the shipments to be handled to those which had previously moved, or were subsequently to move, by rail. With respect to that condition, the situation in the instant case is somewhat different from that in the case cited. There the points to be served in the authorized operation included a number of large manufacturing and distributing centers from which there is considerable movement of merchandise and other commodities, in less-than-carload quantities, to other points on the authorized routes. In the instant case, all points on the considered route are relatively small, and little less-than-carload traffic originates at such points. For this reason, we shall not, at this time, subject the certificate to be granted applicant to the prior-or-subsequent-rail-haul condition. With this exception, it will be conditioned similarly to that in the case cited. One of such conditions will provide for the future imposition by us of such further specific conditions as we may find necessary to restrict applicant's operation to service which is auxiliary or supplementary to rail service.

783 We find that present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between Monahans, Tex., and Lovington, N. Mex., over the regular route hereinbefore described, serving all intermediate points, and Wink, Tex., and Eunice, N. Mex., off-route points, subject to the following conditions:

(1) The service to be performed by applicant shall be limited to service, which is auxiliary to, or supplemental of, rail service of the Texas-New Mexico Railway Company, hereinafter called the Railway;
(2) Applicant shall not serve, or interchange traffic at, any point not a station on the rail line of the Railway:
(3) All contractual arrangements between applicant and the Railway or The Texas and Pacific Railway Company, shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties;
(4) Such further specific conditions as we, in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder; that a certificate authorizing such operation should be issued; and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application, except to the extent that operations are authorized herein.

Commissioner Rogers dissents.

783-A *Order*

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 2nd day of March, A. D. 1939

No. MC-50544

Texas & Pacific Motor Transport Company
Common Carrier Application

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is made a part hereof,—

IT IS ORDERED, That said application be, and it is hereby, denied effective April 10, 1939, except to the extent that the issuance of a certificate of public convenience and necessity is authorized by the findings in said report.

IT IS FURTHER ORDERED, That applicant be, and it is hereby, notified and required to cease and desist, on or before April 10, 1939, from operations as a motor carrier covered by said application other than those authorized in said report.

By the Commission, division 5.

(Seal)

W. P. BARTEL
Secretary

784 *Statement C-2*

Applicant began operations between Shreveport and Cypress, both via Natchitoches and Pleasant Hill, on the 26th day of September, 1935, and has continuously so operated since. The other operations were commenced on the 22nd day of February, 1937, but applicant has not handled interstate traffic except on the Shreveport-Cypress routes.

Applicant is a subsidiary of The Texas and Pacific Railway Company and all of the local agents of such Railway Company are also applicant's agents. They will be available at practically all points served at reasonable hours for the full and adequate service of the public in connection with the proposed expedited transportation. The station and warehouse facilities of the railway will likewise be available in connection with the proposed service, which is supplemental and auxiliary to less-than-carload rail service of The Texas and Pacific Railway Company. Only points situate on such railway are served.

The schedules shown in Statement B-1-(a)-(1) are coordinated with train schedules of The Texas and Pacific Railway Company and are so designed as to afford a regular dependable overnight service from all principal distributing points serving the territory, and afford an early morning delivery of freight to receivers at all points involved. At the smaller towns, which constitute the great bulk of the points served, there is no regular dependable service such as is proposed. Such towns are in the main served by local freight trains, which, because of varying amounts of switching and similar work and because they must yield to superior trains, do not afford a service as reliable or as expeditious as that proposed. Many of such

towns are served by competitive motor carriers, but the service rendered by them is neither so expeditious nor reliable as that proposed, because such carriers do not maintain agents or station facilities except at a few points and have no place to drop off freight when their schedules, as is frequently the case, call for arrival during the night or at times during the day when receivers of freight are not at their places of business or are unable to take delivery of freight. When freight is handled by such carriers it must either be carried past destination and back-hauled or held for a later schedule, and in either case the time in transit and time of delivery is not adapted to the needs of the public.

Applicant proposes to operate its trucks as alleged and unload freight therefrom into stations at the various points served during the early morning hours, so that it will be available when agents come on duty early in the morning and so that delivery can be made to consignees in time for them to have the goods available for use or sale during the entire business day. Generally, consignees desire delivery early in the morning as they open their stores so that goods may be receipted for and placed in stock before other duties engage their time, and so that such goods will be available for early customers. Store door delivery will be accomplished through local draymen.

In conjunction with the expedited dependable service proposed, agents will be present at substantially all points for the quotation of rates and schedules, handling of claims, and tracing of shipments. Better loading of cars can be obtained and hauling of empties minimized by consolidating shipments from distributing points into fewer cars which will be set out at such points as Addis, Alexandria, and Shreveport, from which such shipments will be handled by truck. Such handling will have the further effect of minimizing terminal expense in congested
785 areas and will make possible quicker and more practical loading of freight. Classification and switching of cars at train origin points will be rendered less difficult and train schedules can be improved and train service kept more perfectly on schedule.

The proposed service will to a large extent relieve local trains of handling less-than-carload freight, with a consequent improvement in their handling of carload freight, and will speed up their operations over the rails and lessen interference with through trains.

787 Before the Interstate Commerce Commission

Docket No. MC-50544 Sub-No. 1.

In the Matter of the Application of THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, a corporation, of Texas and Pacific Building, Dallas, Texas, for a certificate of public convenience and necessity, (Form BMC 8) Sub. No. 1, to extend its present operations filed on form BMC 8, authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally with exceptions, in interstate commerce, in the State of Louisiana, over regular routes.

Transcript of Hearing

Shreveport, Louisiana, June 24th, 1937.
9 o'clock A. M.

Before: Joint Board No. 154, composed of Honorable ALEX GROUCHY, Chairman, (Louisiana), Examiner P. S. PEYSER, sitting in for the Commission.

Appearances:

T. D. Gresham, R. S. Shepard, H. Payne Breazeale and Sam Lancaster, Esqs., Dallas, Texas, appearing for applicant;

J. R. McClurken, Central Station, Shreveport, Louisiana, appearing for Louisiana & Arkansas Lines.

789 PROCEEDINGS.

Chairman GROUCHY: The Interstate Commerce Commission Bureau of Motor Carriers, is calling at this time and place Docket No. MC-50544, Sub. No. 1, in the mater of the application of the Texas & Pacific Transport Company, a corporation, of Texas & Pacific Building, Dallas, Texas, for a certificate of public convenience and necessity, Form BMC 8 Sub. No. 1, to extend its present operations filed on Form BMC 8, authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally with exceptions, in interstate commerce, in the State of Louisiana, over regular routes.

In entering appearances please state name, address, and whether you are a registered practitioner before the Interstate Commerce Commission.

Mr. LANCASTER: H. Payne Breazeale, Baton Rouge, Louisiana, who is a registered practitioner, T. D. Gresham,

R. S. Shepard and Sam Lancaster, of Dallas, Texas, all of whom are registered practitioners, all of the above-named appearing for the applicant, those actually present being only Mr. Breazeale and Mr. Lancaster.

Mr. McCLURKEN: J. R. McClurken, Central Station, Shreveport, Louisiana, appearing for the Louisiana & Arkansas Lines, a registered practitioner, in support of the petition.

Exam. PEYSER: Did you file a petition of intervention?

Mr. McCLURKEN: No.

790 Exam. PEYSER: Under the Commission's rule you will have to file a petition unless you just want to appear as a witness.

Mr. McCLURKEN: I want to appear, Mr. Examiner, for the purpose of receiving the orders.

Exam. PEYSER: But if you want to become a party to the case you have to file a petition.

Mr. McCLURKEN: I will file a petition.

Exam. PEYSER: I have some short forms.

(Discussion off the record.)

Chairman GROUCHY: Are there anymore interventions by persons not opposed to the application? Any interventions by those not opposed? (No response) We will have the interventions of protestants, on the appearances. (No response)

Mr. LANCASTER: If your Honor please, it appears from the application the operations here involved lie wholly within the state of Louisiana. This applicant also conducts operations elsewhere which are not either connected with or joined to in anyway the Motor Carrier operations which are here involved. The applicant takes the position that under the Motor Carrier Act of 1935 the Commission may issue a certificate of convenience and necessity to applicant, but that we are not required as a condition of handling interstate commerce in its operations lying wholly within the state of Louisiana, that they may not require applicant to have authorization from it to engage in those operations. I desire to file at this time, but I do

791 not care to argue the point now, a motion which recites the facts that I have outlined, asking the Commission to hold and find that it may issue, but that applicant is not required to obtain from it a certificate of necessity and convenience, and in the alternative, but without waiving the first motion, we ask that the Commission hold and find that it has no authority to either grant or deny

the certificate of convenience and necessity, upon the ground that these operations are those conducted by a carrier wholly within any state.

Exam. PEYSER: Is that based on the lack of jurisdiction?

Mr. LANCASTER: Our alternative motion is. Our first is not based on that, but we do ask them to hold that they may issue but we are not required to have a certificate. Shall I file three copies?

Exam. PEYSER: Ordinarily you do, yes.

Mr. LANCASTER: I have already stated the substance of the motion.

Chairman GROUCHY: The motion is received and will go into the record for action of the Board.

(Three copies of said motion were received and are forwarded herewith.)

Mr. LANCASTER: Our first witness will outline the scope of the operation involved, so I won't go into that.

Exam. PEYSER: Mr. McClurken has prepared a petition of intervention, which I understand he wishes to file.

792 Chairman GROUCHY: It is received.

(Three copies of said petition of intervention were received and are forwarded herewith.)

Exam. PEYSER: Mr. McClurken, will you state for the record your position?

Mr. MCCLURKEN: As far as I am able to determine at this stage of the proceeding, Mr. Examiner, and Mr. Commissioner, our position is in support of the petition. I don't think anything will arise that will cause me to change that. If it should, I will at that time state my reasons.

T. E. HUFFMAN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your name and your occupation and address, and all?

A. My name is T. E. Huffman; my residence is Dallas, Texas. I am employed by the Texas & Pacific Railway Company as General Merchandise Traffic Agent, and I am General Freight Agent for the Texas & Pacific Motor Transport Company.

Q. The latter company is the applicant in this proceeding?

A. The latter company is the applicant in this proceeding.

Q. Now, the applicant is a corporation, as described in the application?

A. It is.

Q. Is it authorized to do business in the State of Louisiana?

793 A. It is.

Q. Outline in general, please, the scope of the Motor Carrier operations which are presently conducted by this applicant?

A. The Texas & Pacific Motor Transport Company operates intrastate in Louisiana.

Q. Over the routes involved in this application?

A. Over all the routes involved in this application, handling interstate freight, points between Cypress and Shreveport, Louisiana, both via the main line and the Pleasant Hill branch.

Q. Let me interrupt to ask the time those operations were inaugurated between Shreveport and Cypress?

A. I think it was September 26th, 1935.

Q. Then this application, so far as those operations are concerned, this application is for authority to continue the handling of interstate commerce?

A. That is correct.

Q. And as to all the other routes involved, it is an application to inaugurate the handling of interstate commerce?

A. Correct.

Q. What other operations elsewhere are conducted by the applicant?

A. The applicant operates a truck service between Moynihan, Texas, and Lovington, New Mexico, handling both intrastate and interstate freight. The service was inaugurated about September 26th, 1935. The appli-

794 cant operates truck service between Dallas, Texas, and Big Springs, Texas, handling both state and interstate tonnage. This service was inaugurated June 11, 1937.

Q. Was that pursuant to authority from the State of Texas and from the Interstate Commerce Commission?

A. It is under Motor Carrier Docket ICC, MC-F 107 and 108.

Q. Does the applicant hold from the Louisiana Public Service Commission certificates of convenience and necessity authorizing each and every of the operations involved in this application?

A. It does.

Mr. Lancaster: At this time the applicant wishes to offer in evidence four series of documents which are the certifi-

cates referred to by the witness, or certified copies thereof. I offer them all as Applicant's Exhibit No. 1.

Exam. PEYSER: Don't you think you had better number them separately?

Mr. LANCASTER: All right, I withdraw that. Applicant offers at this time a certified copy of certificate issued by the Louisiana Public Service Commission, dated the 14th day of October, 1935, as Exhibit No. 1.

Chairman GROUCHY: It will be received.

(Exhibit No. 1, witness Huffman, received in evidence.)

Mr. LANCASTER: Applicant next offers in evidence a certificate dated the 8th day of December, 1936, issued by the Louisiana Public Service Commission, as Applicant's Exhibit No. 2.

795 Chairman GROUCHY: Received.

(Exhibit No. 2, witness Huffman, received in evidence.)

Mr. LANCASTER: Applicant next offers a certified copy of the order pertaining to Exhibit 2, likewise dated December 8th, 1936, as Exhibit No. 3.

Chairman GROUCHY: It will be received.

(Exhibit No. 3, witness Huffman, received in evidence.)

Mr. LANCASTER: Applicant next offers certified copy of a mandatory certificate issued by the Louisiana Public Service Commission dated the 10th day of May, 1937, and ask that it be marked Exhibit No. 4.

Chairman GROUCHY: It will be received and filed.

(Exhibit No. 4, witness Huffman, received in evidence.)

Q. (By Mr. LANCASTER) In conducting intrastate operations in the State of Louisiana, as outlined by you previously, and in conducting operations in interstate commerce over portions of the intrastate routes between Shreveport and Cypress, does the applicant confine itself to rendering a service to and from points on the line of and served by Texas & Pacific Railway Company?

A. It does.

Q. Is the applicant, as stated in the application, a subsidiary of the Texas & Pacific Railway Company?

A. It is.

Exam. PEYSER: Mr. Lancaster, is this application
796 limited strictly to stations served by the Texas & Pacific Railway Company?

Mr. LANCASTER: Yes, sir.

Exam. PEYSER: Aren't there some points on the Missouri Pacific?

Mr. LANCASTER: No, sir; the Missouri Pacific has operating rights on our line, but those are our points.

Exam. PEYSER: What are those points, Opelousas, and so forth?

Mr. LANCASTER: Yes, sir; that is the sole point, but I don't think the Missouri Pacific comes in there.

Mr. BREAZEALE: The Missouri Pacific operates over the T. & P. on their mainline from New Orleans to Alexandria, and they are our mainline points.

Mr. LANCASTER: I might say there are other points on our line which are operated on by other railroads, also, but they are points on our line also.

(Discussion off the record.)

Q. (By Mr. LANCASTER) Mr. Huffman, will you please outline in general the present mode of conducting motor carrier operations over the routes here involved, as applied to intrastate traffic at the present time, and as proposed to be applied to interstate traffic?

A. This truck service is an auxiliary service to all railroads. We load cars at the distributing points, for
797 example, New Orleans, Louisiana, that car is taken in over night train to Addis, reaching there about midnight, and there the tonnage radiates out to the very small stations, reaching them 7 o'clock or for early morning delivery.

Q. From Addis it is picked up and run out by truck to small main line points, as well as branch line points?

A. Yes, sir.

Q. Is it substantially accurate to say you furnish a service which otherwise could be furnished by local freight trains handling way cars, they are called, I think, of less than carload freight?

A. That is correct, and it is a universal way of handling merchandise by railroad, by local train. The local train operates a distance generally of about a hundred miles, peddling out the merchandise as it goes through the small towns.

Q. Prior to the time the traffic is transferred to the trucks at Addis, or at other central points, is it handled in your through trains from the distributing point?

A. It is.

Q. Those trains operate on schedule?

A. Yes.

Q. Are they fast trains?

A. Yes.

Q. And they do not make stops to unload any freight from any car in the train?

798 A. No, sir.

Q. Is that correct?

A. That is correct.

Q. They set out cars at various points receiving enough freight to justify the operation of the car?

A. That is correct.

Q. And sometimes they set out cars containing traffic not only for the point at which a car is set out but also for other points which are served by local trains from such set out point; is that so?

A. That is right.

Q. In your operation you primarily substitute truck service for the local train service?

A. Insofar as merchandise or small shipments are concerned, that is correct.

Q. By merchandise you mean less than carload traffic, as that word is used all throughout this proceeding?

A. That is right.

Q. Does that truck service handle anything other than merchandise freight?

A. No.

Q. Now, just in a general way, what advantages are derived from the use of the coordinated service such as you have outlined, that is, the rail-truck service?

799 A. There are numerous advantages, among which is the saving of time in transit.

Q. In particular, as to that saving of time, I would like to amplify that. Has it been your experience that you can generally afford an overnight service or early morning delivery to consignees by this coordinated service, whereas heretofore you have not been able to achieve that by the local freight train service?

A. That is correct. The local freight train service is irregular. They have to give up the right-of-way for superior trains. They of necessity are delayed at stations in switching, depending on the season of the year, the amount of work they have to do, and they run on irregular schedules.

Q. Or do they have any schedules?

A. Only the leaving time at the terminal.

Q. Now, I will ask you later as to the significance of getting an early morning delivery with overnight service out of the distributing point. Now then, that is the fast service; what other advantages are to be derived?

A. Well, it is economical operation, flexible service which can expand and contract with the flow of tonnage.

Q. And still keep the same character of service even at times of light traffic?

A. That is right. It causes fewer train stops of the fast trains, creates heavier carloading, saves terminal costs, saves gross handling of empties, which at certain times are very scarce, saves car mileage, and it offers a dependable schedule. I mean by that an on-time schedule to the smaller towns.

Q. Do you run your trucks on a fixed schedule each day?

A. We do.

Q. Are you able to maintain those schedules?

A. We are.

Q. Now, I wish you would touch on this part of the handling. Take a shipment or shipments after the time they have been transferred from the train and put onto the truck for handling onto some destination. Explain the physical handling of that shipment?

A. Well, we will take shipments destined up the Ferriday branch, say to New Roads, out from Addis.

Q. Let's assume that is a shipment from New Orleans that moved to Addis on the train?

A. That is right.

Q. What happens to it at Addis?

A. It arrives at Addis in a freight train from New Orleans during the night and is placed on a truck for New Roads.

Q. The car is set out at Addis?

A. Yes, and there the tonnage is placed on a truck, and as soon as it is loaded, which is an hour or probably less after it arrived at Addis, the truck departs for its destination, which is, say New Roads or intermediate points. At arrival at New Roads or other stations the tonnage is unloaded during the night into the freight depot of the T. & P. and the tonnage is available for delivery early in the morning by the local drayman.

Q. Then the local drayman is what is ordinarily referred to as the contract drayman?

A. Hauling within the city limits of the particular town.

Q. That freight is dispensed or handled by the local agent at destination in the same manner as if it had arrived by train?

A. Yes, insofar as the public is concerned. They deal with the local agent and railroad facilities in every detail.

Q. It is not necessary then for consignee to meet trucks as they come through or to have their transactions with the truck driver?

A. No, sir.

Q. Instead of that they have their freight at the station and they deal with the established local agent there?

A. Yes.

Q. And it affords them a delivery of their freight through the agency of a contract drayman at such time as they may desire it the next morning?

A. That is right, where there is one available.

Q. At all points where the railroad has an agent he is the joint agent of the applicant?

A. That is correct.

Q. Now, the agent is there for the handling of claims and for the quotation of rates and schedules and like matters?

802 A. Performing the general duties of a station agent.

Q. For the transport company as for the railroad?

A. That is right.

Q. The same as for the railroad?

A. They are joint employees.

Q. Now, the transport company, does it hold itself out to the public as a common carrier of merchandise freight?

A. It does, and issues its own bills of lading and publishes its own tariffs.

Q. Does it file any published tariffs covering interstate and intrastate?

A. It has, and does.

Q. It issues its own bills of lading?

A. It does.

Q. It handles and pays or declines, as the case may be, its own claims?

A. It does.

Q. It owns and operates the trucks?

A. It does.

Q. It hires and fires the truck drivers and other employees?

A. It does.

Q. What have you to say as to the financial ability of the applicant to maintain the service that is conducted and make that service available for the handling of interstate traffic?

803 A. The applicant is financially able and willing to furnish the necessary equipment and service to maintain the schedules and first class service.

Q. What has been the trucks operating experience of this applicant so far, up to the present time?

A. We operated approximately a million miles since we have been in business.

Q. About how many truck miles do you operate a month?

A. Approximately one hundred and fifty thousand truck miles a month, at the present time.

Q. What has been your experience as to your cost of operation of those trucks, in terms of truck miles?

A. It costs 8 to 10 cents a truck mile.

Exam. PEYSER: What do you include in that cost, all costs?

The WITNESS: Yes, sir; all costs pertaining to the truck operations.

Exam. PEYSER: Anything in connection with your stations or general facilities?

The WITNESS: I didn't get that.

Exam. PEYSER: Do you include in the allowances for use of the stations of the Texas & Pacific?

The WITNESS: No, sir; I don't understand they are included in there, other than the contractual arrangements between the two, which is a certain per cent. I mean, the joint employees of both companies and the T. & P. Motor Transport pay a certain per cent of that, but that is
804 not included, I don't think, in these figures.

Exam. PEYSER: That is taken care of in the divisions between the railway and the transport company?

The WITNESS: That is right.

Exam. PEYSER: So there might be additional costs that would be entailed in the railroad divisions?

The WITNESS: It is possible.

Mr. LANCASTER: I might explain,—rather, I think the application shows the ownership, but I will ask him about it specifically.

Q. (By Mr. LANCASTER) Are the facts stated in the application with respect to the ownership of the applicant, as well as all other facts stated therein, true and correct?

A. Yes, they are.

Mr. LANCASTER: I desire to offer at this time an exhibit by way of supplement to one of the attachments to the application, being the income account of the applicant for the months January 1 to April 30, 1937, which includes a profit and loss statement, which will be Exhibit No. 5.

Chairman GROUCHY: It will be received as Exhibit No. 5.

(Exhibit No. 5, witness Huffman, received in evidence.)

Mr. LANCASTER: I also offer as Exhibit No. 6 a similar statement for the Texas & Pacific Railway Company covering the same period.

Chairman GROUCHY: It will be received and so marked.

805 (Exhibit No. 6, witness Huffman, received in evidence.)

Mr. LANCASTER: I now offer as Exhibit No. 7 the profit and loss account of the Texas & Pacific Railway Company, which is a supplement to Exhibit No. 6.

Chairman GROUCHY: It will be received and marked Exhibit No. 7.

(Exhibit No. 7, witness Huffman, received in evidence.)

Mr. LANCASTER: It covers the period ending April 30, 1937. I now offer as Exhibit No. 8 a general balance sheet as of April 30, 1937, of the Texas & Pacific Motor Transport Company.

Chairman GROUCHY: Received.

(Exhibit No. 8, witness Huffman, received in evidence.)

Mr. LANCASTER: As Exhibit No. 9 I offer a general balance sheet statement of the Texas & Pacific Railway Company, which is in two pages.

Exam. PEYSER: Mr. Huffman, were these Exhibits, 5 to 9, prepared by you or under your direction?

The WITNESS: Yes, sir.

Exam. PEYSER: And you are willing to vouch for their correctness?

The WITNESS: Yes, sir.

Mr. LANCASTER: These exhibits were prepared by the accounting department, weren't they, under your direction?

The WITNESS: Under my direction and instructions; yes, sir.

Exam. PEYSER: They will be received.

806 (Exhibit No. 9, witness Huffman, received in evidence.)

Q. (By Mr. LANCASTER) How many units of equipment are now operated by the applicant in all its operations?

A. Thirty-seven trucks and thirty-nine van type trailers.

Q. Are they semi-trailers?

A. Yes.

Q. The equipment operated in the State of Louisiana is as set forth in the application, being 16 units?

A. Correct, 16 tractors and 16 van type trailers.

Q. They are equipped with air brakes and all of the safety devices required by the state and federal authorities?

A. They are.

Q. This equipment, the motor equipment, constitutes substantially all of the investment in equipment of the Texas & Pacific Motor Transport Company, doesn't it?

A. It does, as of the date those reports were issued.

Q. And since the time of those reports there has been acquired for the Dallas to Big Springs run how many units?

A. 10 tractors and 12 trailers.

Q. 12 semi-trailers?

A. 12 semi-trailers.

Q. Now, Mr. Huffman, do you have prepared an exhibit which indicates at representative points the difference between the time in transit for traffic handled by freight trains and that handled by coordinated truck service?

807 A. I have.

Mr. LANCASTER: I offer that exhibit as applicant's exhibit No. 10.

Chairman GROUCHY: It will be received.

(Exhibit No. 10, witness Huffman, received in evidence.)

Q. (By Mr. LANCASTER) Now, Mr. Huffman, your Exhibit No. 10 is self explanatory?

A. Yes.

Q. It reflects as to some 60 odd points a comparison between all-trains and rail-truck service?

A. That is correct.

Q. Now, have you made or caused to be made an investigation of the service, particularly as to interstate freight, which you propose to render, and compared it with service which is available by a common carrier truck line to the various points involved?

A. As to facilities?

Q. The time of transit from interstate points, say from Dallas and Fort Worth to representative points. Do you know how they compare?

A. Yes.

Q. You caused an investigation to be made?

A. Yes.

Q. Just in general, without undertaking to speak of each point, what do you find?

808 A. I find that at some points the truck lines are equally as good as the rail lines, or the proposed service. Other points the truck service is not equal to that of the proposed service.

Q. Let me ask if that is true of the smaller points?

A. No, it is not true at the smaller points. It would be from Dallas to Shreveport.

Q. What is true of Dallas to Shreveport?

A. The truck service would be equal to the rail and truck service.

Q. Now, let me ask you whether you find that your service would effect an improvement, in general?

A. It would effect improvement, say from Dallas to points south of Shreveport, or I believe you call it east of Shreveport out of here toward New Orleans, or it would improve the service from Fort Worth to points east of Shreveport, or it will improve the service from St. Louis or Memphis or through those gateways to points south. It will improve the service in connection with the rail lines through Alexandria.

Q. Now, is it substantially true to say,—of course there are exceptions, but is it substantially true to say that service from points, we will say such as Dallas, Fort Worth, Memphis and St. Louis to a majority of the towns involved in this application, will be bettered by the proposed service than by any other available form of transportation?

A. Yes, that is correct. The municipality of the
809 transfers by the various truck lines does not exist by the proposed service. Divided responsibility among the truck lines does not exist for this proposed service. A shipper generally likes to do business with one carrier all the way through, has been my experience.

Q. Let me ask on that point, is it a fact that, say from Fort Worth to some point south or east of Shreveport, that the shipments moved by truck lines all the way through, are there several interchanges involved?

A. Yes, three interchanges from Fort Worth to points south of Shreveport, and two to Shreveport proper.

Q. The further south you go the more interchanges you have to have, and especially along the branch line points?

A. Yes, sir, and some of the branch line points are not served at all by the truck lines.

Q. Have you made or caused to be made an exhibit indicating at representative points the facilities, station facilities and delivering facilities, showing whether or not we have advantages, and those of the truck lines serving those points?

A. I have.

Mr. LANCASTER: I offer that as Exhibit No. 11, the tabulation referred to by the witness. This exhibit is self explanatory except for the tabulation on the first page, under the title of "Summary". I don't think that is quite clear. Will you explain what that means?

The WITNESS: It means that of 73 towns that is to be serviced by the Texas & Pacific Railway Company—

Mr. LANCASTER: By the applicant, you mean?

The WITNESS: By the Texas & Pacific Motor Transport Company, the applicant, we have depot facilities and agents 100 per cent, while the truck lines only serve 16 towns or 21 per cent.

Q. (By Mr. LANCASTER) Do they only have facilities in 16?

A. It is the depot facilities I have reference to. And of the stations involved, 73, the Texas & Pacific Motor Transport Company, the applicant, furnishes delivery service at 69 with local pick-up delivery draymen, or 94½ per cent, whereas the truck lines, competing truck lines, only have local pickup and delivery service at 16 stations or 21.9 per cent. Most of those stations served by the truck lines are large stations, and not the smaller stations at which the Texas & Pacific Motor Transport offers that kind of service.

Q. This exhibit, on the other pages of it, indicate that in many instances they operate their pick-up and delivery service by line haul trucks?

A. That is right.

Q. You do not mean to infer by this that they do not render pick-up and delivery, by any means, at these points?

A. Local pick-up.

Q. In other words, where they may have a man stationed there under contract to perform that service?

A. That is right.

Mr. LANCASTER: We offer that exhibit.

Chairman GROUCHY: It will be received.

(Exhibit No. 11, witness Huffman, received in evidence.)

Q. (By Mr. LANCASTER) Still referring to this exhibit No. 11, Mr. Huffman, and summarizing it, does it appear that the smaller towns have facilities for the storage of freight and have agents for advising the public and the transacting of the carrier's business with the public only through the combined facilities of the applicant and the Texas & Pacific Railway Company?

A. That is correct.

Q. Now, is it further true as to such points to say that the only expedited service which can be obtained is that proposed by the applicant?

A. That is correct.

Q. Which will still make available the advantages of station facilities, local agents and local draymen?

A. That is correct.

Mr. McCLURKEN: Mr. Lancaster, this is not cross examination, but merely to explain. On page 6 of Exhibit No. 11, in connection with Alexandria, I take it that the omission of the L. A. & T. Transportation Company was because the L. A. & T. does not handle traffic between Alexandria and points on the T. & P.?

812 Mr. LANCASTER: On that route; yes, sir.

Mr. McCLURKEN: On these routes, even though the L. A. & T. does have service, we will say, from Alexandria to Shreveport and vice versa. It might be a good idea to clarify that, because you do show some L. A. & T. stations.

Q. (By Mr. LANCASTER) Is it true, Mr. Huffman, that at any of the points shown which are served by other rail carriers, that such rail carriers maintain depot facilities and contract draymen for pick-up and delivery service?

A. They do.

Q. And like facilities as are had by the applicant?

A. Yes, sir. With this proposed service it enables the small town to be taken care of on the same basis as the larger town, and larger merchants.

Q. Now, on that point, will you explain why it is a need particularly at the smaller towns for a service such as you propose?

A. Yes. If the carrier is not able to give the small towns and the merchants therein the same service as the larger towns, his already diminishing business will continue to go to the larger towns. For an example, if there is a farmer living half way from Alexandria to the nearby small station, Alexandria is large enough to secure a carload of tonnage merchandise in a box car. The small towns would only get service at irregular intervals. The merchant could not tell the customer when he

813 could expect his goods with any regularity. It naturally forces the producer to go to the larger town, because he knows the tonnage will be there, his shipment, at a certain hour.

Q. Let me ask you this, Mr. Huffman: Is it true that the merchants in the smaller towns are directly competing with those in larger centers which have been accessible to their customers—have been made accessible to their customers via the same highways over which we are proposing to operate trucks?

A. That is correct.

Q. And that in the smaller towns there is not a sufficient volume of trade for the smaller merchant to carry a large quantity of the particular items he has in stock. Is that true?

A. That is correct.

Q. As a result, does the smaller merchant have to carry a wider variety of stock, and fewer of each item in order to compete with his larger rival, who with a heavier volume of trade can carry a variety and ample items of each in stock to suit his customers?

A. That is correct, and with his superior service it enables the small merchant to reduce his overhead.

Q. At points where the traffic is sufficient to operate a set-out car from the larger distributing centers, the merchants in those towns have had an advantage in point of service on the inbound freight over those who have
814 heretofore been served only by local trains or trucks?

A. That is correct.

Q. Now, the net effect of it is to equalize the opportunities of all?

A. That is what this service will do.

Q. Do you find there is a need and a demand for such service?

A. I do.

Q. In your conduct of operation in intrastate commerce, and to the extent that you have engaged in interstate commerce on routes within the State of Louisiana, have you found that there was a ready acceptance of the service?

A. There is and has been.

Q. Have you found that it was satisfactory to the patrons of the applicant, and of the Texas & Pacific Railway Company?

A. I have.

Q. They express that as a general proposition?

A. They do.

Q. Now, what procedure is followed by a truck line when they do not have station facilities or a local agent at the smaller points which they serve? I speak of truck lines other than applicant?

A. Of necessity they are bound to carry the goods to some of their terminals, or until they meet another truck line going in the opposite direction.

Q. You mean unless the truck passes through at
815 the particular hour when the man is ready to receive his freight?

A. Yes, sir.

Q. He doesn't have anywheres to leave the freight?

A. Yes, sir.

Q. So he has to haul it off?

A. Yes, sir.

Q. So, even in point of time from the distribution point to the destination, his service may be equal to that here proposed, but he is not able to effect a delivery of it until later because in many towns he has no place to drop off his freight when he passes through?

A. That is correct. Anybody who has not done business in a small town will never appreciate what the merchant is up against when he does not have an agent to take up his claims with or to quote rates, and many other conditions given him by the local agent.

Q. Is it a frequent thing that goods will be received by consignees who reside out of and away from towns?

A. That is correct.

Q. Especially in connection with the handling of their shipments to their stations is it essential that the carrier handling them have, at some convenient town where he receives his freight, proper facilities for the storage and care of his freight?

A. It means quite a good deal to the receiver and
816 shipper of freight.

Q. So it will be there for him with certainty when he comes into town?

A. That is correct.

Q. During certain seasons of the year state whether or not there is traffic congestion on the T. & P. Railway, and even on the branch lines?

A. Yes, especially is that so in Louisiana during the cane harvest.

Q. Cane is all harvested within two or three months of the year?

A. Yes, sir; which causes congestion on all the rail lines, and irregular service.

Q. The local trains in many instances handle the cane to the sugar mills?

A. Yes.

Q. And the varying amount of that work makes their arrival time highly uncertain?

A. Yes. Besides there is more switching at the mills and intermediate points.

Q. In addition are there special care trains operated which tend to congest all lines, make more meetings in passings, and loss of time?

A. That is correct.

Q. Will that situation affect the service which can be rendered as proposed?

A. It will not.

817 Mr. LANCASTER: I think that is all.

Mr. GROUCHY: Mr. Huffman, in answer to a question by Mr. Lancaster, in your early statement there, did I understand you to say that there was no other service to Addis, for instance? You did not mean to say the Fababher & Herrin and T. S. C. Motor Lines were not serving that, did you?

The WITNESS: No, I don't know whether I said that or not. I said there were some towns that did not get truck service. I don't think I mentioned Addis, though. But even though they do, they don't render the same service as the applicant, as they have no station facilities or agents.

Q. (By Mr. LANCASTER) Your exhibit here seems to indicate there is no other service at Addis except that of the applicant and the T. & P. Railway Company?

A. That is what my investigation showed at those stations. If they come through it was not on regular schedule, and nobody knew anything about it.

Q. How did you make this investigation?

A. Through the local stations and the merchants in those towns, discussing it with them.

Q. Did you instruct each of your local agents to make inquiry?

A. I did that, and also sent a traveling representative who contacted some of them.

Chairman GROUCHY: That would be, of course, a matter of record?

818 The WITNESS: Yes, sir.

Chairman GROUCHY: These other lines, I believe they serve from Port Allen?

The WITNESS: They probably have authority in there, you know, but it has not been regular service.

Q. (By Examiner PEYSER) Mr. Huffman, at the present time at what points on your line do you have set out cars from New Orleans?

A. Right now, Addis, Bunkie, Alexandria, Natchitoches and Shreveport. I think that covers it.

Q. How about the other direction? Do they have set out cars from those points to New Orleans?

A. No, sir; those are consuming points and they do not ship, except from Shreveport to New Orleans.

Q. You have one from Shreveport to New Orleans?

A. Yes, sir, and from Alexandria to New Orleans, but Shreveport and Alexandria are quite a distributing center and they load several cars daily, especially at Alexandria, but not so much at Shreveport, because we are operating interstate trucks out of Shreveport.

Q. Do I understand that service consists of a movement of those set out cars, say from New Orleans to Addis?

A. Yes, sir.

Q. And then a movement by truck from Addis to destination?

A. Yes, sir. We try to serve the little towns with
819 regular dependable service every day, which cannot be done with local freight trains.

Q. Now, as to these five points you have named, do the set out cars move daily from New Orleans?

A. Except Sunday.

Q. What would be the longest haul by truck from one of those distributing points to destination?

Mr. LANCASTER: Can you tell, exactly?

The WITNESS: Well, pretty well. Approximately 125 miles should be the furtherest. It would not hardly be that far direct, but the route you have to travel to get over the good roads, it would be 125 miles.

Q. How would traffic move from an interior point in one of these districts to an interior point in another district?

A. Picked up at the station where the truck passes through during the night, and carried to the—going to New Orleans, for example, originating at some point close to Alexandria, we would truck it into Alexandria and there have sufficient tonnage to load a straight car to New Orleans.

Q. Then that would not contemplate trucking, say all the way from New Orleans, to say Marksville?

A. No, we are not doing that now. I don't know of any plans that would at this time cause us to do that.

Q. It is not your idea to truck between any points where you have a rail car moving between those points?

820 A. Not if the tonnage is sufficient. Of course, conditions may change from time to time, but at

the present time we only operate one truck out of New Orleans, and that is to serve all points from New Orleans to Addis, up the mainline.

Q. Do you have any local way trains out of New Orleans to stop at these points at the present time?

A. Yes, sir; we have our local runs from Addis and New Orleans to Gouldsboro daily, up one way and back the other, the same service as we have had for years.

Q. And in that service you are carrying traffic, interstate commerce?

A. Yes, sir; not only interstate commerce, but that train does station switching as it comes up the line. Now, by moving this tonnage on the trucks it enables the people between New Orleans and Addis to receive their freight at the regular hour every day. If it moves on the local the first station out of New Orleans, say Luling, today the local agent would get his freight at 7 o'clock in the morning, but tomorrow the local leaving Addis, he would get his freight about 3 or 5 o'clock in the afternoon, or 9 o'clock at night, because the local works from Addis to New Orleans.

Q. Would you continue these local way trains to points other than concentration points if this authority is given to you?

A. The local way trains do not handle merchandise at all. That is handled on fast trains leaving in the
821 early part of the night.

Mr. LANCASTER: He is speaking of your intrastate freight.

The WITNESS: You mean if this interstate tonnage was taken off, would we continue the local train?

The LANCASTER: Yes.

The WITNESS: Sure. There is only a small percentage of that interstate tonnage, or l. c. l. tonnage.

Q. (By Exam. PEYSER) Would you continue those local trains?

A. Yes. I don't see any reason in the world why that would cause us to cease the operation of that train.

Q. Would there be any saving to the railway in the operation of those local trains?

A. Ask that question again.

Q. Where would the saving be to the railway in the operation of those local trains?

A. The saving in the operation would be to get those trains on time, and if you cut off the merchandise it enables them to serve all the carload shippers in the inter-

mediate points between New Orleans and Addis on a regular schedule. It might save them some overtime.

Q. Would you have two possible ways of moving less than carload merchandise traffic, say from New Orleans to one of these small points?

A. Yes, we would.

Q. One would be directly by local way train, and the
822 other would be by the set out car to the concentration point and the trucking to destination?

A. Yes, sir. Now, the saving would be in the terminal cost at New Orleans, the cross hauling of empties into New Orleans, which is always in demand, and we could use that empty where we would get a full carload, and the tonnage in that car for intermediate points would be very light, originating at New Orleans, destined to points between New Orleans and Addis. I enumerated all the advantages in the first part of my testimony.

Q. Now, at the present time do you make a distinct differentiation between interstate and intrastate traffic received at New Orleans from other carriers as to the handling on your line?

A. Yes, we are not handling—the interstate tonnage goes in box cars by railroad. The intrastate tonnage is moving by truck.

Q. And that is the only tonnage you are handling in that manner?

A. No, we are doing the same thing at Alexandria, at all points except between Shreveport and Cypress.

Q. Are you handling any traffic received from other carriers at New Orleans over these trucks routes?

A. Are you speaking of state or interstate?

Q. I am asking you if you are handling any of any kind that you receive from other carriers at New Orleans?

A. On state tonnage I imagine we are.

823 Q. Do you know?

A. No, I do not. If state tonnage is delivered to the railroad I imagine we are handling it for their account. We have an enabling clause permitting that.

Mr. LANCASTER: From Shreveport to Cypress how about it?

The WITNESS: We are handling state and interstate. As far as I know, we are not making any distinction at New Orleans.

Q. How do you know positively you are not handling

interstate tonnage received from other carriers at New Orleans by truck?

A. For the reason we have issued positive instructions, and we are checking the situation closely through the station forces down there.

Q. What are the instructions you have given?

A. They must not handle interstate tonnage.

Q. Tonnage originating on your line, does that mean?

A. No, sir; interstate tonnage, regardless of where it originates.

Q. Does the transport company have a contract with the railroad company?

A. It does.

Q. Does that contract provide, in substance and effect, that the railway company will have general supervision of the operation of the transport company?

A. It does not.

Q. Does the contract provide for divisions between the railway and the transport company?

824 A. Only in a percentage way. It states in there what the railroad is to receive from the transport company for the use of stations, station facilities and the transportation over the railroad.

Q. Is that based on mileage?

A. No, sir.

Q. Is it the same for all transportation?

A. Yes, sir.

Q. Does the railroad company get any percentage of the gross operating revenue of the transport company?

A. It does.

Q. How much?

A. 72 per cent of the gross receipts and 10 per cent of the profits.

Q. 10 per cent and 90 per cent?

A. 90 per cent.

Mr. LANCASTER: Is that true as to all operations?

The WITNESS: It is, except where we handle it on our own tracks, interstate tonnage. We have our own tariffs, where we pick up tonnage Moynihan, Texas, going to New Mexico, the railroad does not get the 72 per cent because that is handled on our own trucks, on our own bills of lading.

Q. Then it is possible on this operation for the truck to move the shipment from origin to destination without being handled by the railways?

825 A. Yes, it is possible.

Q. Would there be any such traffic in interstate commerce?

A. It is possible there might be a shipment coming through New Orleans to some point between Addis and New Orleans, say Luling, Louisiana, which would move by truck.

Mr. LANCASTER: How would it move into New Orleans?

The WITNESS: Move by railroad.

Mr. LANCASTER: Then it would move by railroad?

The WITNESS: Yes, but not by the T. & P. Railroad.

Q. (By Exam. PEYSER) Does the transport company contemplate entering any joint arrangement with any other motor carriers as to handling traffic?

A. Well, if the general public demands—if there is a public demand for it we will or would.

Q. Do you consider there is such a demand at the present time?

A. No, sir.

Q. And the primary purpose of the transport company is to offer this supplementary service for the railway?

A. Yes, sir.

Q. And not as a carrier generally by motor vehicle?

A. That is right. It is auxiliary service.

Mr. LANCASTER: Although, as you said, there may be some instances where there would be an all-truck haul for relatively short distances?

The WITNESS: That is right. There would be
826 very few of them though.

Q. (By Exam. PEYSER) In this application you are seeking authority to serve only points on the T. & P. Railway Company or subsidiary companies?

A. Yes, sir; nothing else.

Q. (By Mr. LANCASTER) Mr. Huffman, if a shipment moves partly by rail and partly by truck, the rate from origin to destination is divided between the railway and the transport company?

A. Correct.

Q. Now, the percentages which you have mentioned in the contract relate to earnings of the transport company and the rail carrier in instances where it operates as a rail carrier?

A. That is right.

Q. And they do not relate to its earnings as a truck carrier?

A. Do not.

Q. Now, the contracts, in the main, however, provides for a payment of a percentage of the net income of the transport company at the end of the year, or other periods, to the railroad company?

A. That is right.

Q. And it is designed to cover the use of the railroad facilities and other services rendered by the railroad company to the transport company?

A. That is correct.

827 Q. Now, the Texas & Pacific Railway Company owns all except the qualifying shares of the transport company?

A. It does.

Q. And many of the officers are officers in common?

A. They are.

Q. Although that be true, state whether or not the policy of the transport company, particularly in its truck operations, is dictated by the railway officials, or whether it is confided to your discretion?

A. Left to my discretion. They are not dictated by the officials of the T. & P. Railway.

Mr. LANCASTER: I think that is all.

Chairman GROUCHY: Any further questions? (No response.)

(Witness excused.)

Chairman GROUCHY: Let us take a 5-minute recess.

SHORT RECESS

W. T. LONG JUNIOR, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your name?

A. W. T. Long, Junior.

Q. Where do you live?

A. Dallas.

Q. And what is your occupation?

A. I am superintendent of transportation, Texas & Pacific Railway.

828 Q. Mr. Long, does the transportation service and facilities of the Texas & Pacific Railway Company come directly under your jurisdiction?

A. Yes, sir.

Q. You are familiar with and are responsible for car supply and like matters?

A. Yes, sir.

Q. Train service?

A. I am.

Q. Are you familiar, Mr. Long, with the situation in Louisiana with respect to the handling of less than carload freight prior to the time there was instituted coordinated truck service, as we have outlined here this morning?

A. I am.

Q. Will you state what the facts were as to New Orleans, and as to the loading of the cars and the number of cars, and so forth?

A. Prior to the inauguration of the motor transport company truck service we loaded an average of 18 loads of merchandise per day at the New Orleans freight house.

Q. Now, let me ask you right here, the New Orleans freight house in on the east bank of the Mississippi River at New Orleans?

A. That is right.

Q. The mainline of the Texas & Pacific Railway Company runs on the west bank of the river, starting
829 right opposite New Orleans at Gouldsboro?

A. That is correct.

Q. How are the cars moved from the freight house over to the west bank?

A. From the freight house to the river has been by switch engine, and then by transfer steamer across the river, ferry to the west bank.

Q. Then your train is made up on the west bank?

A. The switch engine is employed on the west bank in the Gouldsboro yard.

Q. These cars then, in effect, must be switched from the freight house to the river, ferried across the river, and then switched into the train on the west bank?

A. That is correct.

Q. All right, sir. Now, state what has been the result of this coordinated service in handling intrastate shipments by rail and truck?

A. With this service we are now loading an average of 11 cars per day from New Orleans freight house, a reduction of 7 cars.

Q. Now, have you computed how many additional cars you could eliminate the loading of at the New Orleans freight house were you permitted to handle interstate commerce in the proposed service?

A. Not less than 4 per day.

Q. That would make a total saving of cars of 11?

830 A. That is correct.

Q. What is the capacity of the ferry across the river?

A. An average of 18 freight cars.

Q. 18 cars. Then you will be able to eliminate over half of a boat load?

A. That is right.

Q. What are the facts about your present operations with respect to whether the ferry can transport across the river in sufficient time to meet your outbound train operation an adequate number of cars?

A. Well, it is a very difficult and impossible operation to dispatch the early evening train on schedule from the west terminal at Gouldsboro on account of late loading, late receipts from connections, and so forth, of carload freight.

Q. At the present time you hold your train until the receipt of your merchandise cars?

A. That is right.

Q. At Gouldsboro on the west bank?

A. Yes.

Q. Now, as soon as those cars have been handled over the river and the train is ready to depart it does depart?

A. Yes.

Q. Now, are there instances and is it a common occurrence for there to be other important carloads of freight, other than your merchandise, which it would be
831 highly desirable to forward on that train, which must be held over?

A. Almost a daily occurrence.

Q. Because there is no time for the ferry to make an other round trip across the river in time to include them in the train?

A. That is correct.

Q. Is that train a scheduled train?

A. It is.

Q. What important connections does that train make?

A. With the Missouri Pacific train at Alexandria, Kansas City at Southern Shreveport.

Q. Now, what character of freight is handled on that train that it is important to expedite?

A. Banana shipments are one of the most important.

Q. They are highly perishable?

A. Very highly perishable, and must move on schedule.

Q. In connection with the other railways you have named you maintain a guaranteed schedule from New Orleans to the various destinations in the east and also out in the west?

A. Through Shreveport to the K.C.S., through Kansas City to their connection on bananas, a very important schedule.

Q. What is the effect, if through delay to that train operation from New Orleans it misses a connection with the Kansas City Southern at Shreveport?

A. In addition to complaints from the shippers
832 and consignees it frequently results in loss and damage claims.

A. Are they very heavy claims, on that kind of traffic?

A. They are.

Q. The schedule which you presently are operating, is that what is known as a tight schedule?

A. It is very tight.

Q. Is it or is it not a fact that as many as two or three times a month the train will miss connections in Shreveport?

A. Yes.

Q. Now, is it or is it not an unfortunate fact that the connection is missed at times by a half an hour or less?

A. Yes, the connection is very close on the K.C.S.

Q. And they can't hold their train but a certain length of time for yours because they in turn have to make a connection in Kansas City?

A. That is it.

Q. Now, what will be the effect of eliminating the 11 merchandise cars from loading at New Orleans at that train?

A. Well, the four additional cars that we would be able to take off would eliminate three stops per night on the train, about 10 minutes per stop.

Q. As the train operates now from New Orleans to Shreveport there are three stops it must make now, and you wouldn't have to make if those four cars were off?

A. That is right. It would mean about 30 min-
833 utes per day, doing that work alone, just the setting out. Of course, in train operations it frequently happens that a five or ten minute delay at one stop brings on some delay beyond that point which you just can't save, but it also results in that.

Q. It is your experience once a train is a little bit late it is apt to get later as it proceeds?

A. Unfortunately it happens that way.

Q. Now, will you run that train with fewer cars if these

cars should not be loaded at New Orleans, or would you put other important freight in that train?

A. There would be no fewer cars. It would be some important carload shipment which is not now moving in the train, which would be expedited.

Q. That now has to wait over until the next train and move on some other schedule?

A. A later schedule, and slower.

Q. So that there will be a really substantial improvement in your service to carload shippers?

A. Yes.

Q. And an even greater improvement in operation and performance of that particular train?

A. That is right.

Q. Now, have you computed or caused to be computed the cost of handling a car in New Orleans terminal and which would be incurred by those cars which you now load?

834 A. Yes, the average cost of handling a loaded car in the New Orleans terminal, which includes the river transfer and all is $10.76 per car.

Q. Now, what is the fact about the availability of cars at New Orleans for loading?

A. We don't take enough cars in New Orleans to take care of our outbound loading. What I mean by that, we originate more carload traffic at New Orleans than we move into New Orleans under load, therefore we must haul empty box cars into New Orleans to protect outbound loading.

Q. Now, has that condition obtained for some length of time?

A. That condition exists practically all the time, and has for several years.

Q. Several years past?

A. Yes, sir.

Q. Now, to meet that conditions, you haul empty cars from other points to New Orleans?

A. Yes, we haul empty box cars into New Orleans from Texas points to protect outbound loading at New Orleans, we are doing that now.

Q. About how many cars do you so handle?

A. About 5 cars per day right now into New Orleans, empty cars.

Q. Are those cars meeting the request for the needs for the terminal at New Orleans?

A. No, sir, I should be putting a few more in
835 there, but we are managing to get a few from other connections and in other ways in New Orleans. The car situation at the present time is tighter than it has been for years.

Q. Now then, what is the condition in Alexandria?

A. In Alexandria we have not been able to make a reduction to any extent in the number of cars loaded at the freight house on account of the heavy amount of interstate tonnage. It is quite a distributing point. Tonnage comes in there from the north and east moving through Alexandria. We are averaging out of Alexandria right now the same number of merchandise cars that we did prior to the inauguration of the transport company, 10 per day.

Q. Prior to the inauguration of the truck service?

A. Of truck service. We figure that at least 9 of those cars can be done away with if we were able to truck the interstate.

Q. You are going to do away with 9 cars. About what is the present loading of those cars?

A. Very light. Quite a few of them with between a hundred and two hundred pounds per day, a box car with the capacity of 80,000 pounds.

Q. Have you examined your records down there to see whether that is a very common occurrence or frequent occurrence?

A. That is almost a daily occurrence.

Q. About what would you say would be your daily
836 average loading of all those ten cars?

A. I can tell you in just a moment. The first 21 days of this month they have averaged, all the cars, 2800 pounds each.

Q. Now, it is your understanding, isn't it, that several truck routes which are operated out of Addis terminate in Alexandria, arriving in Alexandria via several routes from Addis?

A. That is correct.

Q. And return back to Addis, serving intermediate points over those several routes?

A. Yes, sir.

Q. Is it your understanding those trucks run largely light back from Alexandria?

A. That is my understanding.

Q. And that that tonnage can well be handled in those trucks without the use of any additional equipment?

A. That is right.

Q. So that the economies to be achieved by the elimination of those cars would be almost wholly net economies?

A. That is right.

Q. Now, you say that those 10 cars per day,—are they in use only one day, or what are the facts about that?

A. They represent an average of 1158 loaded car miles per day, but it means that the car is tied up about four days, each car, in loading.

Q. Now, the loaded car miles does not take into
837 account the subsequent empty movement?

A. No.

Q. Those cars are probably moved on to New Orleans for loading?

A. Diverted to other use, yes.

Q. But you say they are out of service approximately four days?

A. Yes, that is a fair average for a car in merchandise service, including the placing for loading and the loading and release.

Q. At Shreveport how many cars would you eliminate?

A. About two cars per day.

Q. That are now handling interstate freight?

A. Yes.

Q. And the situation with respect to those cars is comparable with that of Alexandria?

A. Probably a little heavier loading.

Q. But they are by no means loaded to capacity?

A. Oh no.

Q. Would you say loading of four or five thousand pounds would be ample?

A. Yes, sir; ample estimate.

Q. Do you operate cars from Addis?

A. Yes.

Q. That you could save by the proposed operation?

A. Yes, sir.

Q. What are the facts about that?

A. We haul interstate freight from New Orleans
838 and Alexandria into Addis in freight cars, and in the operation of our local freight service out of Addis we must provide freight cars in local trains out of Addis to distribute that freight.

Q. That freight is worked again at Addis, I understand?

A. Yes, we have a local freight train leaving Addis for Alexandria, Monday, Wednesday and Friday. We would eliminate a car out of that train. On Tuesdays, Thurs-

days and Saturdays we have an interstate car out of Addis up the Ferriday branch, and one from Addis toward New Orleans that could be eliminated.

Q. Now, summarizing, how many loaded cars of merchandise can be eliminated, that is, interstate and intrastate, some of which have already been eliminated, but how many, if you are permitted to handle interstate freight in this coordinated service?

A. 17.

Q. That is, an average of 17 cars?

A. Average of 17 cars.

Q. That is, 17 cars are at present engaged at least four days in the service to which they are or have been devoted?

A. That is right. If the car does not operate today, for example, out of one of those points, you must hold it in anticipation of your interstate tonnage, some business, not necessarily a full load of merchandise.

Q. That would be 68 car days per month you would save on an average?

839 A. Yes.

Q. Is there an accepted figure as to the cost of owning a car, which figure is used between railroads in compensating one another for retaining each others cars?

A. There is.

Q. What is the figure?

A. $1.00 per day represents the cost of car ownership.

Q. Does that figure approximate the actual cost of owning a car?

A. It does.

Q. That does not take into account the cost of handling a car a mile, either loaded or empty?

A. Oh, no, that is the cost of the ownership only.

Q. What do you usually compute to be, for purposes of billing other railroads, the cost of handling an empty car?

A. Five cents a mile.

Q. Is that supposed to be on a reciprocal basis?

A. It is.

Q. The cost of handling a loaded car would of course be as much, if not more, than the cost of handling an empty car a mile?

A. That is correct.

Q. Now, what is the present situation of the Texas & Pacific and other railways in general, with respect to car supply, and what is the outlook for the month immediately in prospect?

A. The car situation now throughout the whole
840 country is tighter than it has been in years. I think I can best—

Q. When they are tight, do you mean they are inadequate to meet the demand, present and prospective?

A. Well, there has not been a car shortage. The officers of the Association of American Railroads, Car Service Division, fear that we are on the verge of a car shortage in this country during the coming months.

Q. They have analyzed the situation?

A. Constantly. That is their duty, and they are constantly at that. I think I can best express it by the fact, last month I attended the annual meeting of the operating transportation division of the Association of American Railroads in Chicago, and Vice-President Symes made this statement, that the present outlook for car supply during the coming Fall peak period was at least a 15 per cent increase in business.

Q. That was all freight?

A. In the freight business. An increase of 9 per cent in car ownership of the railroads of the United States, leaving 6 per cent increase in efficiency in the use of equipment to be attained, if a car shortage was to be avoided this Fall.

Q. Then this scheme and this plan, besides the direct economy to the Texas & Pacific will also contribute its part to more efficient general use of box cars?

A. Absolutely.

Q. And other equipment?

841 A. Particularly will it help us in the sugar season this Fall, the Louisiana can season, which is a very heavy movement and a movement of very great importance to the State of Louisiana.

Q. Is that a movement of the refined sugar you are speaking of now?

A. Yes, sir.

Q. What type of cars are necessary to handle that?

A. First class box cars.

Q. And that is the kind that must be available for the handling of your l. c. l. freight also?

A. A good car, not necessarily the highest type car, but a tight, dry car.

Q. So every car you can eliminate from your merchandise service would in all probability be available for the sugar crop when needed?

A. Yes, sir; we have begun worrying about it already.

Q. How many miles is it, Mr. Long, would you say on the average, with these five cars which you haul empty to New Orleans to protect outbound loading, how many is the average miles traveled of those cars?

A. These five?

Q. Yes, a conservative estimate?

A. Not less than 300 miles per car. Some of it would be more than that.

Q. That would be a fair average, you think?

842 A. Yes.

Q. And five cars would be about 1500 car miles per day?

A. And those empty box car miles are being made in the direction of the loaded car traffic, east bound.

Q. Also on the per diem question, the cost of owning cars, if I understand you correctly, there is now a shortage of cars and that cost is going to end up being an out of pocket cost, because new cars will have to be bought unless traffic falls off or we can achieve more efficient movement?

A. That is correct. I would not like to say, Mr. Lancaster,—I would like to be understood right, now, that there is right at this moment not a car shortage,—that is not likely, throughout the United States,—we are not actually refusing business today because we have not equipment there.

Q. However, this is a seasonal low for your traffic, isn't it?

A. It is going up, it is higher now than it was this time last year.

Q. And if you forecast your Fall business by the present index then you have this prospect that you outlined?

A. That is right.

Q. Is there anything else that you care to add?

A. I believe that is all.

Q. I am not sure whether Mr. Huffman touched on it, but do you know with reference to Alexandria whether the handling of merchandise by truck will materially ex-

843 pedite the shipments which are now handled out in those lightly loaded box cars?

A. Oh yes, it is bound to. Of course they will operate and deliver during the night.

Q. And those cars handled out of Alexandria in local trains, are they not?

A. Yes, local trains. At some point a car may be set out for some particular station, but ordinarily in local trains.

Q. Or it might be transported down to Addis and then localled out?

A. Yes, some of our local freight trains operate what we call tri-weekly, one direction one day and back the next.

MR. LANCASTER: I see. That is all.

Q. (BY EXAM. PEYSER) What are the three stops that will be eliminated if you could transport your interstate traffic from New Orleans?

A. Ordinarily Donaldsonville, Melville and Bunkie. On the average it would be that, but maybe one of those would not be on one night and it would be some other point.

Q. You have set out cars from New Orleans to those points?

A. We have to make these cars, yes.

Q. If this authority is given you what less than carload traffic would still be hauled by railway?

A. Well, we would to our concentration points, for example Addis.

Q. Could you name those concentration points?

A. Well, Addis is one, and Alexandria.

844 Q. Bunkie?

A. No, that would probably be trucked, my understanding. That is two points that I could think of, and Shreveport is another. I think that would about cover it.

Q. How about Natchitoches?

A. Well, that would go in by truck, probably. We make a car for Natchitoches now.

Q. Then you would have no less than carload merchandise cars moving to any other point by rail?

A. Not if we could handle the interstate, I believe,—unless there was some volume unusual—

Q. I am talking about the usual run?

A. Yes.

Q. Ordinarily you would move your merchandise traffic to those concentration points and then outbound by truck?

A. Just like we are doing the intrastate.

Q. How would they move in the opposite direction? Suppose you had less than carload traffic coming from Natchitoches to New Orleans, how would that go?

A. Be picked up by trucks.

Q. And carried to Alexandria and then moved in by rail?

A. Might be, yes.

Q. Then the trucking service would be a substituted service to all the small towns?

A. Yes, it is designed for that purpose, yes.

845 (By Mr. LANCASTER) Mr. Long, of course if there were a heavy load in one car the chances are that car would be moved right off?

A. Yes. That is what I said.

Q. As to your interstate freight, substantially all of it would move into the state by train, would it not?

A. Oh yes. Alexandria and Shreveport are very heavy points on inbound interstate.

Q. So there is little if any interstate freight which would not be handled at some stage by train, either prior to its handling by truck or after its handling by truck, in the case of shipments originating at some small point?

A. That is right.

Exam. PEYSER: How far is it from Addis to New Orleans?

The WITNESS: 90 miles.

Exam. PEYSER: And from Addis to Alexandria?

The WITNESS: About 102 miles.

Exam. PEYSER: And from Alexandria to Shreveport?

The WITNESS: 125, I think.

Mr. LANCASTER: That is all.

(Witness excused.)

L. O. LANGLEY, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Langley, have you been sworn?

846 A. Yes, sir.

Q. State your name, please?

A. L. O. Langley.

Q. Where do you live, Mr. Langley?

A. Dallas.

Q. What is your business?

A. Manufacturing and distributing dry goods.

Q. With what firm are you associated?

A. I am Traffic Manager for Higginbotham-Bailey-Logan Company, New York Manufacturing Company, and Higginbotham Millinery Company.

Q. Are they wholesale concerns?

A. Yes, sir.

Q. They also manufacture to a certain extent?

A. Yes, sir.

Q. Do your companies distribute through the territory involved in this application, which is the Texas & Pacific points south or east of Shreveport?

A. Yes, sir; we do.

Q. Do you have a steady flow of freight?

A. Yes, sir.

Q. Do your shipments move in small lots?

A. Yes, sir; they move in small quantities.

Q. Merchandise freight in nearly every instance?

A. Yes, sir.

847 Q. Do they move to the small towns as well as the larger centers?

A. Yes, sir. We stop at every small town. Our salesmen, they have instructions to stop at every small town and supply the merchants with their needs in dry goods.

Q. Are you familiar in a general way with the service that is now available, the common carrier service that is now available to you by rail and by trucks?

A. Yes, sir.

Q. Are you familiar with the service proposed in this application?

A. I am.

Q. To be coordinated with the rail service with the Texas & Pacific from Dallas?

A. I am.

Q. Is the service proposed superior to any service that you now have available?

A. Yes, sir; it is.

Q. Is there any one truck line that operates through from Dallas to any of the points involved other than Shreveport?

A. No other through connection.

Q. Is it then necessary for your freight, if handled by such lines, to be interchanged at least once and probably oftener to those smaller points?

A. Yes, sir; we think so.

Q. Generally speaking, has your experience been

848 that interchange has been unsatisfactory?

A. It has.

Q. State how, in what way your needs would be better served by carrier agency, having agents at destination and station facilities with which to store freight?

A. Well, it is a convenience to the merchants in the destination carrier maintaining an agent and office at destination, for several reasons: One, I will say in the case of loss and damage, concealed loss and damage, particularly. If an agent is maintained at destination he can get in touch with the transportation company's agent and have proper notation placed on freight bills.

Q. The loss can be verified right there?

A. Right at the time; and from my experience, it has been very much more desirable in the handling of claims. We try to the best of our ability to handle all claims for our customers, and I have found in my experience that it has been a very difficult matter in getting settlement on claims unless proper notations are placed on freight bills, and I have further found that it is in some cases practically impossible to get proper notations on freight bills if no agent is maintained at destination. We have also found in the handling of C. O. D.'s that it is much more desirable and satisfactory in the transportation company maintaining an agent at destination, for occasion has frequently
849 arisen where a merchant might not at the time shipment is tendered for delivery have the necessary funds, or does not want the shipment at that time, and it would then be carried on to another point, and the merchant would not know where the shipment had been carried to because there is no guide or any information I know of that is public, in lots of cases, showing just where the freight will be taken to, and it has cost us the loss of profit in our sale, damage to the merchandise in bringing it back to our warehouse.

Q. Mr. Langley, let me ask you at that point if you have any customers who operate what is known as inland stores, that is, stores that have no common carrier service by rail or truck and who must receive their freight at some other town?

A. Yes, sir; we do.

Q. Well, it is essential, is it not, for those customers to receive their freight by some agency that has the facilities to store their freight until such time as they can go into town for it?

A. Until it is taken up, it is.

Q. Was there anything else you have to say, Mr. Langley?

A. No, sir; I don't know of anything else.

Q. Do you think that the proposed service will fill the needs that exist for the proper distribution of your merchandise?

A. We feel that it will. We feel it is a necessity, and very desirable, to have the service inaugurated.

Q. It will be a convenience to you and your customers?

850 A. It will.

Q. You are acquainted with the needs of your customers?

A. Yes, sir; I handle all traffic.

Mr. Lancaster: That is all.

Q. (By Exam. Peyser) Do you use the Texas & Pacific at the present time?

A. Yes, sir; we use the Texas & Pacific in some cases now.

Q. Is their service satisfactory?

A. Well, yes, to a certain extent it is, but there has been some complaints on account of slow delivery.

Q. You said you used the Texas & Pacific to some extent. What other carriers do you use?

A. We use some motor lines and the L. & A. Railway Company to some points.

Q. Do you use motor lines to Texas & Pacific Railway points?

A. Sir?

Q. Do you use motor lines to Texas & Pacific Railway points, on the Texas & Pacific Railway?

A. In some cases we do, yes, sir.

Q. Any particular reasons why you use the motor lines to those points?

A. Well, we have been told by some of the motor lines they can give a quicker service.

Q. (By Mr. Lancaster) Let me ask you this, Mr. Langley:
Are you familiar with the motor carriers serving
851 Fort Worth, and whether or not any motor carrier operating east of Dallas has a line into Fort Worth?

A. I didn't exactly understand you, Mr. Lancaster. You mean from Fort Worth to the points east of Shreveport?

Q. Yes, sir; or east of Dallas. Do you know whether or not there is any motor service, any motor carrier operating a through service from Fort Worth, east through Dallas to points east of Dallas, or must traffic be interchanged at Dallas?

A. It must be interchanged at Dallas.

Q. In otherwords, if your concern was located at Fort Worth, Texas, the traffic would have an additional interchange at Dallas?

A. It would.

Q. Do you know whether or not there are firms located in Fort Worth which also distributes into this territory?

A. Yes, sir; there are.

Q. Mr. Lancaster: That is all.

(Witness excused.)

J. E. CLARK, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Clark, speak your full name, please sir?

A. J. E. Clark.

Q. Where do you live, Mr. Clark?

852 A. Alexandria, Louisiana.

Q. With what concern are you associated there?

A. Secretary of Heminway, Incorporated, furniture business.

Q. Does that company receive shipments in interstate commerce of less than carload freight?

A. We do.

Q. From what point do you receive such shipments, Mr. Clark?

A. Well, we receive them practically every direction.

Q. Do you receive them from Dallas and Fort Worth?

A. We do.

Q. Those are fairly heavy points with you, so far as your l. c. l. freight is concerned?

A. They are.

Q. What do you receive from there?

A. Frigidaires, rugs, lamps.

Q. Electrical equipment?

A. Just off hand I don't know. Such as that.

Q. Are you familiar with what your present service is on those shipments from Dallas and Fort Worth by trucks and rail as it exists now?

A. I am not so familiar. I think it is around 36 hours delivery.

Q. In other words, if a shipment leaves Dallas tonight, this being Thursday, it will arrive Friday morning in Alexandria?

A. Under the present set up.

Q. Yes, sir.

853 A. By rail.

Q. Yes, sir; by rail or truck either one. Saturday morning, I meant.

A. Saturday morning, yes, sir. It would be delivered to us around one o'clock Saturday.

Q. So it would in reality be almost 48 hours service?

A. Well, in a way, yes, if it happens to come at the end of the week.

Q. Now, you understand if this proposed application is granted that you will receive a service, we will say, on a

shipment which leaves Dallas or Fort Worth tonight, that that shipment will be at your store around noon or one o'clock tomorrow afternoon?

A. Yes, sir.

Q. In other words, about 18 hours service, as opposed to 36 hours service?

A. That is what I understand.

Q. Will that be of material benefit to you in your operations?

A. It will. We do business with the Craven Company, which make living room furniture in Dallas. They, I think, maintain a truck of their own, but where we buy, say forty living room suites, there may be out of that order of forty, maybe there will be eight suites they cannot fill to ship immediately. Well, those eight suites will come local, which we might need worse than we did the other thirty-two that they deliver.

854 Q. Did I understand they would handle the thirty-two down in their own equipment?

A. That is right.

Q. And that would not come by any common carrier at all?

A. No, sir.

Q. But the eight they would have to wait and ship down by less than carload freight?

A. That is right, and this proposed service to us will mean this, that we can promise a customer a definite delivery of a special order. For instance, say we have a living room suite on the floor covered with blue, they want it covered with blue, and it is covered with burgundy. We can say, "This is the frame we have and you can get this in blue," and we will have it by one o'clock Saturday.

Q. If you can give them that service that means you can hold these patrons who would not be willing to wait indefinitely but would go elsewhere?

A. That is the way with us.

Q. You would be able to carry a lighter stock because you will be able to frequently and expeditiously replenish it?

A. That is right.

Q. And that would mean a savings to you?

A. Yes, sir; investment and turn over, which is quite an item in the furniture business today.

Q. Of course you compete with others who might
855 receive their goods from other points where they have that service already?

A. Yes, sir.

Q. And you have need for a similar service from your sources of supply?

A. Well, of course, Mr. Lancaster, at the present time it is all right, but we are always willing to improve, regardless of what it is. We are in favor of any improvement, whether it is service or whether it is merchandise. That is our aim in business.

Q. It would be more convenient to you, and if anybody with whom you have to compete has a superior service you have need of a superior service too, also?

A. Yes, sir.

Q. And that is your situation?

A. Yes, sir.

Q. Now, you live in Alexandria. You would not be much concerned with intrastate service, would you?

A. I don't know whether this would be a matter of interest to you. I am not complaining, of course it doesn't matter to you, with reference to the service we have at the present time by motor lines, but we do have trouble on our claims. I will say that much for the railroads, we can settle a claim much better with the railroad companies than we can the truck companies.

Q. Is that especially true where there is only one
856 line handling it, undivided responsibility?

A. Yes, sir; I just happened to have in mind one, but there are many. We have had trouble in adjusting claims.

Q. Have you found the T. & P. Railway Company and the T. & P. Motor Transport Company to be a responsible efficient organization?

A. Very much so; yes, sir.

Q. I think that is all. Oh yes, let me ask you this: If you don't know, that is all right; if you do, it will be helpful. Do you know, from your business experience, whether there are others who are similarly situated in your city, and whether or not the things you have said are true of your own organization would also be true of their's?

A. I would not know, Mr. Lancaster?

Mr. LANCASTER: That is all.

Q. (By Exam. PEYSER) According to your understanding, where would your shipments coming from Dallas move by trucks?

A. Beg pardon?

Q. Strike that question How do you understand your shipments would move under this new service from Dallas?

A. Where would my shipments move?
Q. How would they move?
A. Under this new proposed schedule?
Q. Yes.

A. Move by train to Shreveport, and be picked
857 up by the motor transport here, and delivered to us the next morning.

Exam. PEYSER: Thank you.
Mr. LANCASTER: That is all. Thank you, Mr. Clark.
(Witness excused.)

E. S. HARDY, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. Lancaster) State your name, please?
A. E. S. Hardy.
Q. You are of the firm of Hardy Brothers at Lecompte, Louisiana?
A. Yes, sir.
Q. You are also the Mayor of Lecompte?
A. Yes, sir.
Q. In what business is your firm engaged?
A. General mercantile business.
Q. Are you associated with any bank there?
A. I have a brother who is; my partner in business is a director in a bank.
Q. Are you familiar with conditions of the shippers and receivers of freight at your home?
A. I think I am; yes, sir.
Q. Does your firm receive less than carload shipments of interstate commerce?
A. Yes, sir.
Q. From what points do those shipments generally move?

858 A. St. Louis, Richmond, Virginia. We sometimes have shipments from Dallas.
Q. Any from Memphis, Tennessee?
A. Not often, very seldom. We sometimes have shipments from Birmingham, Alabama.
Q. Let me ask you, how do your shipments usually move at the present time, whether by rail, by truck, or how?
A. They move by rail. You mean interstate?
Q. Yes, sir; interstate?
A. They move by rail.
Q. You have occasional shipments by trucks, independent of railway, interstate shipments?

A. Not often.

Q. What is your rail service? How is Lecompte served, by main line through trains or local trains?

A. Served by local trains.

Q. It is your understanding the proposed service will substantially improve your service by lessening the time in transit of your shipments?

A. Yes, sir.

Q. Will that be an advantage to you in the conduct of your business?

A. Yes, sir.

Q. Can you say whether the same would be true of others similarly situated in Lecompte?

859 A. Well, I should think that prompt delivery of freight would be an advantage to any man in business.

Q. In other words, you assume their needs to be substantially in accordance with yours.

A. Yes, sir.

Q. And your experience shows that to be true?

A. Yes, sir.

Q. Do you receive intrastate freight?

A. Yes, sir.

Q. In less than carload quantities?

A. Yes, sir.

Q. Do you receive such freight by motor carrier service by the Texas & Pacific Motor Transport Company?

A. Yes, sir.

Q. Do you find that service to be satisfactory?

A. Very satisfactory; yes, sir.

Q. Do you find it a decided improvement over the service formerly existing?

A. Yes, sir.

Q. Do you know the sentiment of other shippers and receivers in your town, and if so will you state what it is?

A. Well, I have not talked to very many of them, but those that I have heard express themselves are very very favorably impressed with this service.

Q. Do you know of any dissatisfaction with the service?

860 A. No, sir.

Q. And you think that if it should extend to interstate freight it would be favorably received?

A. Yes, sir.

Mr. LANCASTER: I think that is all.

(Witness excused.)

Mr. LANCASTER: We have some 10 more witnesses here from various points that will say substantially the same thing with reference to their points. Of course, I want to afford the Examiner the opportunity to ask them anything he cares to, but I don't want to repeat and incumber the record, but I thought I might just put them on and ask them where they are from, and if their situation is substantially the same.

Exam. PEYSER: Yes, if their situation is the same.

PERCY A. LEAMANN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Leamann, where are you from, please sir?

A. Donaldsonville, Louisiana.

Q. In what business are you engaged, or what businesses?

A. Wholesale grocery, hardware, implements, sugar planter and sugar manufacturer.

Q. You operate a sugar mill?

A. I am vice-president of the Dewey Sugar Cooperative.

861 Q. Does your company receive interstate freight in less than carload quantities?

A. Yes.

Q. From what points does the freight come?

A. I should say from almost every point in the United States.

Q. Well, can you name a representative point?

A. Oh, I would say Illinois, Missouri.

Q. St. Louis?

A. St. Louis.

Q. Are you familiar with your present service via rail and also via common carrier trucks?

A. Yes.

Q. What has been your experience as to such service?

A. Well, we have had fairly good service, I would say, at Donaldsonville. Of course, we are a rather large receiving point, in comparison to the places that will be served by this new motor transport, if I understand it correctly.

Q. You now have a set out car operated there which will bring your freight from some point?

A. Yes, sir.

Q. But as to freight originating at other points it is handled in a local train to Donaldsonville?

A. Yes.

Q. Is it accurate to say that the freight train service from interstate points, and that afforded by motor
862 carriers other than the applicant, is about the same at the present time?

A. I should think so.

Q. Did you hear Mr. Huffman testify here this morning?

A. Yes.

Q. Outlining the proposed improvement in service?

A. Yes.

Q. State whether or not that would fill a convenience there, whether or not that would serve a convenience and fill a need of your business to have such service?

A. Well, I don't think there is any question about any auxiliary to the present service would be quite a benefit to all concerned.

Q. Do you, in sales, compete with other towns for patronage of outlying citizens who may buy either at Donaldsonville or elsewhere?

A. Yes, sir.

Q. You have to furnish the same service to your customer as is furnished by the merchants in other cities?

A. Baton Rouge and New Orleans.

Q. Is it a material benefit to you to have a regular dependable service established so that you can carry a wide variety of stocks and easily replenish them?

A. I should think it would be.

Q. Has that been your experience?

A. Yes, sir.

863 Q. As to intrastate commerce, that is, freight originating in Louisiana, have you patronized or had occasion to patronize the coordinated truck service of the T. & P. Motor Transport Company?

A. Very little.

Q. Most of your freight comes from interstate points?

A. Handled mostly by our own trucks.

Q. Will there be instances, in your opinion, where you will be saved the inconvenience of operating your own truck if you have a more expeditious service by common carrier than you have now?

A. I think there would be.

Q. You operate your own truck now because that is the only way you can get the kind of service that your business requires?

A. Yes, sir.

Q. And you would prefer, if you could, to have another agency to take over some part of that, if they could give the same service?

A. The same service, and the price no more.

Q. Are you familiar with the situation of other merchants at Donaldsonville?

A. Well, I think our situation would just about cover anybody in that area.

Q. You think yours would be representative of others?

A. Yes, sir.

Q. In Donaldsonville and outlying towns around Donaldsonville?

864 A. I think so.

Q. How long have you lived in Donaldsonville and in the territory?

A. I have been there 30 years, and our business has been established 100 years.

Q. Then you are thoroughly familiar with the situation there?

A. I think in another 100 years I will be.

(Witness excused.)

DAVID L. BABIN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. Lancaster) Mr. Babin, please state your full name?

A. David L. Babin.

Q. Where are you from?

A. Crowley.

Q. In what business are you engaged?

A. Tractor implement business and hardware.

Q. You receive interstate shipments of less than carload freight?

A. Yes, sir.

Q. From what points are those shipments generally moved?

A. I believe we get about probably half out of St. Louis, probably a little over. We get quite a good deal out of Corsicana, Texas, Corsicana Machinery Company.

Q. Do you receive that freight by both the T. & P. Railway Company trains and by other motor freight lines?

865 A. Yes, sir.

Q. About what is your service now, four or five days?

A. Out of St. Louis?

Q. Yes, sir.
A. Out of St. Louis it is about seven days.
Q. About seven days?
A. Yes, sir.
Q. That is both by rail and by trucks?
A. Well, St. Louis,—I think it is six days. No, we get nothing out of St. Louis by truck. I believe it comes by train.
Q. It comes by train all the way, but do you receive any by other motor freight lines other than the T. & P.?
A. Yes, sir; we do, but not as good.
Q. Is that service the same?
A. No, the motor service is better.
Q. The motor service you have now is about how much faster?
A. I really don't know just how much that is faster there out of the state; probably a day.
Q. Did you hear these other gentlemen testify here this morning from Alexandria and those other points? Did you hear them testify?
A. Yes, sir.
Q. Was what they said substantially true of your own business?
A. Well, yes, very much. We save quite a little time, have better service out of Corsicana, Texas. We get
866 their service with the truck line. Let's see, about two days, and the freight from the railroad, it will take about five days, four or five days.
Q. That is from Corsicana?
A. Yes, sir.
Q. Do you know what your truck line service is from St. Louis?
A. We don't get much from St. Louis.
Q. It moves by train from St. Louis?
A. By train, you know, railways.
Q. Do you receive intrastate freight?
A. Well, freight out of Corsicana.
Q. I mean intrastate freight, freight from New Orleans or Shreveport. Do you receive freight from there?
A. From New Orleans?
Q. Yes.
A. We really get better service out of New Orleans over the truck line.
Q. That freight moves by the T. & P. Motor Transport, does it?

A. Motor transport, it is moving by rail lines. We have the majority of it by T. & P. Transport.

Q. Then you have used the coordinated service?

A. We are using the motor transport line altogether where we can, and found it to be better service.

Q. You found it to be better service?

867 A. A hundred per cent. Don't have any train trouble at all. They could give better service. It is all the same, of course, but the service is better. That is what we find, the service is better.

Q. You found a substantial improvement since they started the T. & P. motor service?

A. The service is better, you know. Of course, the other lines give better service also, but the T. & P. gives better service yet.

Q. In other words, you find since we started our service that the other lines give you better service too?

A. Yes, I guess they are waking up.

Q. (By Exam. PEYSER) From what point is that service?

A. We have a group of shipments out of New Orleans every day, practically, and we find on those shipments improved service right there.

Q. About how much time do you save?

A. Over the other line?

Q. No, over the improved service?

A. I would say about five or six hours.

Q. (By Mr. LANCASTER) You get early morning service now?

A. Yes, used to get it in the evening.

Q. It is an advantage to you to have your freight every morning for use during the whole day?

A. Certainly is.

868 Q. And if it doesn't come in the afternoon, as far as sales are concerned, you might as well not have it until the next day?

A. Well, sometimes, you know, you are out of certain articles you've got to have, and if you haven't got them to sell you will lose the sale.

Mr. LANCASTER: Thank you.

(Witness excused.)

F. L. BORDELON was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your name, please?

A. F. L. Bordelon.

Q. Where are you from, Mr. Bordelon?
A. Ville Platte, Louisiana.
Q. What is your business in Ville Platte, Mr. Bordelon?
A. I am manager of the Angolian Wholesale Grocery Company.
Q. Does that company receive freight both interstate and intrastate in less than carload quantities?
A. Yes, sir.
Q. From what points do you receive interstate freight, chiefly?
A. Well, interstate, we get milk from the Carnation people out of Schulenburg, quite a bit of hardware equipment out of Jasper, Alabama, and also out of New York.
Q. The heaviest of your interstate less carload shipments are the milk shipments?
869 A. Yes, I guess it would be, milk out of Texas.
Q. Schulenburg Texas?
A. Yes, sir.
Q. Are you familiar with the service on those shipments now?
A. Yes.
Q. How does it now move by rail?
A. By rail a little slower.
Q. About four or five days?
A. About four or five days, it is at times.
Q. If there could be effected a substantial improvement in that service such as outlined by Mr. Huffman would that meet a need of yours?
A. Oh, yes.
Q. Would that be more convenient to you?
A. Yes.
Q. Have you had experience with the service of the Texas & Pacific Motor Transport Company as to interstate shipments?
A. Yes, we have almost daily shipments.
Q. What has been the facts about that service? Is it satisfactory?
A. Very satisfactory; we get morning service instead of afternoon service.
Q. Early morning service out of New Orleans?
A. Instead of afternoon.
Q. Does that service compare favorably not only
870 with the former train service but with other service of the motor carriers?
A. It is superior service.

Q. Do you know the sentiment of your town generally with regard to the service?

A. I think I speak for the town as well as for myself, because we got together and talked it over. In fact, we organized and asked them to give us morning service out of New Orleans, if possible?

Q. So that you think you can speak for the other people?

A. Yes.

Q. You have expressed a desire in times past to all of the carriers to see if they couldn't give an early morning service out of New Orleans?

A. Expedite—speedier service.

Q. And it is, so far as intrastate traffic is concerned, it is satisfactory, and if this application is favorably acted on it will apply to interstate traffic also?

A. Yes, sir.

Mr. LANCASTER: I think that is all. Thank you very much.

(Witness excused.)

F. H. BLOCK was sworn and testified as follows:

Direct Examination:

Q. (By Mr. BRAEZEALE) Where are you from, Mr. Block?

A. Thibodaux.

871 Q. What is your business?

A. I have a furniture store.

Q. Do you receive interstate shipments?

A. Quite frequently.

Q. Are you familiar with this proposed service of the T. & P. Motor Transport Company?

A. Yes, sir.

Q. You heard the testimony given by the several witnesses who preceded you?

A. I have.

Q. Do the statements and evidence given by them as a whole apply to your operations, and what you understand the situation to be?

A. They do.

Q. Are there any differences you would like to point out or do you adopt their testimony as a whole as yours?

A. Entirely.

Mr. BREAZEALE: That is all; thank you.

(Witness excused.)

H. E. NAQUIN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. BREAZEALE) What is your name?

A. H. E. Naquin.

Q. What business are you engaged in, Mr. Naquin?

872 A. I am in the implement, hardware, manufacturing business.

Q. Where?

A. Thibodaux, Louisiana.

Q. Do you use both interstate and intrastate shipments?

A. Anything,—not the truck line.

Q. Do you get your goods in from interstate?

A. I get stuff from all over the United States.

Q. Are you familiar with this proposed service by the Texas & Pacific Transport Company?

A. Yes, sir.

Q. Mr. Naquin, you heard the testimony of the witnesses that preceded you?

A. I heard them all, took it all in.

Q. Does that testimony as a whole apply to your idea and your conception of your situation?

A. Yes, sir; right you are.

Q. Have you any differences to point out?

A. No, I have no difference. The only thing I can tell you about, the freight, when you talk about freight like that, when you get stuff out of Crowley to Thibodaux, it takes you a week, where with a truck the next morning you have got it.

Q. This proposed service then will be both a convenience and a beneficial service to you?

A. Yes, sir.

Mr. Breazeale: That will be all, Mr. Naquin.

(Witness excused.)

873 C. A. Peck was sworn and testified as follows:

Direct Examination:

Q. (By Mr. Breazeale) Mr. Peck, you have been sworn in this matter?

A. Yes, sir.

Q. Where are you from, sir?

A. Crowley.

Q. What is your business in Crowley?

A. Hotel business.

Q. Have you received intrastate and interstate shipments?

A. Yes, sir.

Q. In connection with your business at Crowley?

A. Yes, sir.

Q. You have heard the testimony about the proposed

service of the Texas & Pacific Transport Company in connection with the T. & P. Railway Company?

A. Yes, sir.

Q. Will that service be of convenience to you?

A. I would think so; yes, sir.

Q. Have you heard the testimony of the preceding witnesses?

A. Yes, sir.

Q. What is your idea about their testimony as affecting your own situation?

A. Well, I think it would fit in very nice with our situation.

874 Q. Do you adopt and approve their testimony as it was generally given affecting these operations?

A. Yes, sir.

Q. Have you any additions or differences to point out so far as you yourself are concerned?

A. No.

Q. You believe those facts then are correct and will apply to you in your situation at Crowley?

A. Yes, sir.

Mr. BREAZEALE: Thank you very much.

(Witness excused.)

R. B. SMITH was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) What is your name?

A. R. B. Smith.

Q. Where are you from?

A. New Roads.

Q. What concern are you with there?

A. I am Assistant Manager of B. Olind & Sons there. They run a store at Baton Rouge and one at New Roads.

Q. You receive both intrastate and interstate freight?

A. Yes, sir.

Q. You receive freight both via the T. & P. Railway and the T. & P. Motor Transport Company?

875 A. Yes, sir; nearly all our goods are shipped by carloads. Of course we have candy, rugs, notions, and things like that that move l. c. l.

Q. You do have a substantial volume of less carload?

A. Yes, sir; ten or fifteen thousand pounds a month.

Q. What is your rail service as to interstate freight which comes by train?

A. Well, we have a delay at Addis. It is two days.

Q. Every other day service?

A. Yes, sir. It gets in at night or around night. If it is around noon it gets there.

Q. If it hits Addis right you don't lose over a day, but if it gets there wrong you lose two days?

A. Two or three days.

Q. In your intrastate freight how is your service?

A. Anything we buy in New Orleans one o'clock, we get the next morning at seven o'clock before we open up.

Q. You find that a convenience to you?

A. You advise the local agent what time you want your freight and he has it at your door, the first thing in the morning.

Q. Is that a material convenience to you in the operation of your business?

A. Oh yes, because we handle tobacco and stuff, and sometimes you don't know how to buy it sometimes. Sometimes you sell more than others. If we have to wait
876 four or five days you can't sell it. We can't tell how big a stock to carry, you know.

Q. You have a highly variable patronage?

A. Yes, sir.

Q. Are you familiar with the service of other motor carriers?

A. Well, of course there are some few that deliver for us. I noticed the other day another truck line had some barrels of stuff for a fish company, and he was over telephoning and I know he was sitting there two hours trying to find a place for the barrels.

Q. In other words, one night—

A. It was in the daytime.

Q. It was a common carrier's truck?

A. Yes, sir.

Q. And he got there with a load and they had no depot?

A. The place was closed and he had no place to put it, and the man was away.

Q. Do you know whether he had to haul that shipment on out?

A. I couldn't tell.

Q. At least, you know he took at least two hours trying?

A. He was at the store telephoning a couple of hours.

Q. That would cause a delay to his schedule?

A. Yes.

Q. Are you familiar with situation of the other merchants in your town?

877 A. About the same; yes, sir.

Q. The situation of the other merchants is about the same as yours, as to freight?

A. Yes, sir.

Mr. Lancaster: That is all.

(Witness excused.)

P. E. Dixon was sworn and testified as follows:

Direct Examination:

Q. (By Mr. Lancaster) State your full name, please?

A. P. E. Dixon.

Q. Where are you from, Mr. Dixon?

A. Mansfield.

Q. Mansfield is between Shreveport and Cypress, isn't it, on the T. & P. Railway?

A. Yes, sir.

Q. What business are you in, Mr. Dixon?

A. I own and operate the Western Auto Associated Stores.

Q. You receive interstate freight in less than carload quantities?

A. I do.

Q. From what points do you receive such freight?

A. Most of it from Dallas.

Q. Are you familiar with the service of the T. & P. Railway and the T. & P. Motor Transport Company on that freight?

A. Yes, sir.

878 Q. What service do you get?

A. I get very good service out of Dallas. I can send to Dallas, like this afternoon, and I get my merchandise the second day. The merchandise will be shipped out like this afternoon, and I get it the next morning.

Q. In other words, as soon as your order is filled then the next morning you get your merchandise?

A. Yes, sir.

Q. How does that compare with the service by other carriers?

A. Other carriers it would be the second or third day delivery.

Q. Second or third day instead of second morning?

A. Yes, sir.

Q. Is it a material advantage to you to be able to replenish your stock overnight?

A. Quite a bit.

Q. Does that enable you to carry lesser stock on particular items?

A. Yes, sir.

Q. That saves you money and enables you to serve your customers better?

A. Yes, sir.

Q. Now, your interstate freight, as well as intrastate freight, is handled to you on trucks of the T. & P. Motor Transport Company?

A. Freight originated in Louisiana, I believe the
879 last few shipments have been handled by Herrin. The Herrin representative came down and I agreed to let him have some freight. I get my oil out of New Orleans, due to the fact of the special oil tax.

Q. I meant this point: On your shipments which move either via T. & P. Company, or T. & P. Transport Company, they move into Mansfield on trucks?

A. Yes, sir.

Q. And that has effected a substantial improvement as to the intrastate freight especially?

A. Yes, sir.

Q. There are other merchants at Mansfield who are similarly situated to you?

A. I have heard one speak of it only. I have not talked with a great many. In fact, I only talked with one, the man next door, dry goods business, he gets quite a bit of merchandise out of Dallas and Fort Worth and he is in the same condition I am in. He gets overnight service.

Q. That service is a material advantage from the aspects you outline?

A. Yes, sir.

Q. How far is Mansfield from Shreveport?

A. Approximately 41 miles.

Q. Do you draw some customers who could as well go to Shreveport as to Mansfield, out of town customers?

A. I do. I get some trade from customers who
880 live approximately half way between Mansfield and Shreveport.

Q. And you, in fact, must compete with the Shreveport merchants?

A. Oh yes.

Q. And if he has this fast service from Dallas and Fort Worth and other points, you have a need for the same character of service in Mansfield?

A. Yes, sir.

Mr. LANCASTER: That is all.

Exam. PEYSER: How long has that service been available to you from Dallas?

The WITNESS: I have only been up there since September 16, 1936.

Exam. PEYSER: The service was in effect at that time?

The WITNESS: Yes, sir; the service was in effect at that time.

(Witness excused.)

G. V. SAUCIER was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Saucier, where are you from?

A. Marksville, Louisiana.

Q. You are associated with the Marksville Wholesale Grocery Company?

A. Assistant Manager.

Q. Does your company receive interstate freight
881 in less than carload quantities?

A. Yes, sir.

Q. From what points do the principal movements come from?

A. From Schulenberg, Texas, Chicago, Illinois, and Jackson, Mississippi.

Q. Do they move in via the T. & P. Railway Company and other motor carriers?

A. Well, mostly over the T. & P. Railway.

Q. Did you hear Mr. Huffman outline the proposal to handle l. c. l freight by coordinated truck service?

A. Yes, sir.

Q. You understand that would effect a substantial saving in time, as much as a day?

A. Yes, sir.

Q. Will that be a material help to you in the conduct of your business there?

A. Yes, sir.

Q. You think there is a public need for such service?

A. I do.

Q. Judging from your experience you would say there is such a need?

A. Yes.

Q. Do you receive intrastate freight from, say New Orleans or Shreveport?

A. Yes.

882 Q. Have you had an opportunity to compare the service which was formerly rendered by the T. & P.. and that which is now afforded by the coordinated motor truck service?

A. Yes, sir.

Q. How do the two compare?

A. Before the motor truck service was in use we purchased merchandise from New Orleans and it would take approximately three days to deliver it. Now we get it in a day and a half or two days at the most.

Q. In other words, you get the next afternoon service or noon service, on the shipments that leave New Orleans at night?

A. Yes, sir.

Q. Do you have any shipments from Shreveport or Alexandria that you have noted?

A. I have from Alexandria. That means a much better time savings because merchandise coming to us through Alexandria, it takes about two days. Now, we get it in overnight service.

Q. By truck it is a matter of a few hours?

A. Yes, sir.

Mr. LANCASTER: I think that is all. Thank you, sir.

(Witness excused.)

W. J. EASTIN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your full name?

883 A. W. J. Eastin.

Q. Where are you from, Mr. Eastin?

A. Ville Platte.

Q. Is there another gentleman who testified here? Did you hear Mr. Bordelon testify this morning?

A. Yes, sir.

Q. He is also from Ville Platte?

A. Yes, sir.

Q. What company are you associated with?

A. G. Ardoin.

Q. That is a general mercantile establishment?

A. Yes, sir.

Q. You receive less than carload freight both interstate and intrastate?

A. Yes, sir.

Q. Would your testimony, if I asked you the same thing as I did of Mr. Bordelon, would your testimony be substantially the same as his?

A. Practically the same.

Q. Do you feel there is a need for the improved service as proposed?

A. For interstate; yes, sir.

Q. Your experience with intrastate service, where it is already in effect, has been very satisfactory?

A. Yes, sir.

Q. It has effected a substantial improvement in
884 the service available by any carrier?

A. By six hours.

Q. In other words, you get an early morning service now?

A. Early morning, and regular.

Q. As compared to an afternoon service and irregular?

A. And irregular; yes, sir.

Q. And that is highly beneficial?

A. Yes, sir.

Mr. LANCASTER: That is all. Thank you.

(Witness excused.)

T. E. HUFFMAN, re-called, testified further as follows:

Direct Examination:

Q. (By Exam. PEYSER) Mr. Huffman, have you checked the highways on each of your routes as shown in the application to see whether they are correct?

A. Yes, sir.

Q. And you found them to be correct?

A. I did.

Q. I notice as to Route 9 and Route 10, between Shreveport and Alexandria, and Shreveport and Natchitoches, that no intermediate points are shown?

A. That is right.

Q. You do not intend to serve any intermediate points on that route?

885 A. No, sir; that route is a passover route only. It is the best paved road between Shreveport and Alexandria, and we have no towns,—the T. & P. or T. & P. Motor Transport have no towns on that road, and we only use that as a passover because that highway is built to withstand more traffic, and it is economical operation and quicker time for the delivery of freight.

Q. In other words, you would use those routes for through traffic?

A. Yes, sir. Alexandria and points south on our railroad.

Q. How would traffic move from Shreveport to Addis?

A. If we had any traffic for Addis it would move over that route to Alexandria?

Q. And then be trucked from Alexandria to Addis?

A. Yes, sir.

Q. You would not use any rail service between those points?

A. It would depend on the volume of traffic.

Q. Well, for the normal amount of traffic?

A. We have so small amount of it I doubt if there would be a hundred pounds a week in there.

Q. Then as a practical matter you would move a shipment by truck from Shreveport down almost to the border of New Orleans, by truck, unless you had a larger amount of traffic?

A. I don't know what you call a larger amount. If it would justify operation of a car we would certainly put in a car.

886 Q. But your present plan is to move it by truck?

A. Yes, because there is just no tonnage moving to those points, except to New Orleans from Shreveport, through tonnage. Then we would move that in the box car all the way.

Q. The only point at the present time that you contemplate the movement of the box cars south on these routes is from Shreveport to New Orleans?

A. We probably will at times operate a car from Shreveport to Alexandria, depending on the volume of tonnage. Our train leaves there at 11 o'clock at night, and if there is any tonnage left over prior to the departure of the train, and it is of any importance in size or quantity, we will move it in that train that night.

Q. Haven't you a truck schedule from Shreveport leaving early in the morning for Alexandria?

A. Yes, sir; and one in the afternoon, but if anyone offers a shipment, six or seven thousand pounds, after the truck, we would move that in a train, but that would be unusual; whichever gives the most dependable and expeditious service to the general public is what we are trying to do, at the least cost.

Q. One witness testified he would save nearly a day in time from Dallas to Alexandria by reason of this service?

A. He will.

Q. That is because his shipments are moved by the set out car from Dallas to Shreveport, and then by truck from Shreveport?

887 A. It will arrive in Shreveport around 4 A. M., and the tonnage taken out of that car and put in a truck leaving Shreveport around 7 A. M., and be in Alexandria around 10:30. At the present time that tonnage does not move out of Shreveport until 10 o'clock that night, and gets to Alexandria the next morning.

Q. Why does it take so much time to leave Shreveport?

A. For the reason we have no schedule trains out of there.

Q. Does the volume justify a through car?

A. It does not.

Q. (By Mr. LANCASTER) The primary object of that route from Shreveport to Alexandria is to expedite the movement of that freight which arrives in Shreveport from the north and west too late,—well, I will say in the morning on your usual train, which would force that to lay over until the evening train out of Shreveport. Is that right?

A. That is right.

Q. Let me ask you if there is a sufficient amount of traffic to justify the operation of another freight train at an early hour during the day from Shreveport, so that it can be handled out by train any earlier than 11 o'clock at night?

A. No, there is not.

Q. Your trains are operated on schedules primarily designed to handle the movement of through traffic, with due regard to the connections with other lines, and their trains' time, and other circumstances not within our control entirely?

888 A. That is correct.

Mr. LANCASTER: That is all. Thank you.

Exam. PEYSER: Thank you.

(Witness excused.)

Mr. LANCASTER: Now, if the Joint Board please, at this time I wish to request the Joint Board and the Commission, in the event it should be determined under the Motor Carrier Act and under the evidence in this case that applicant, as to interstate commerce, is a contract carrier, that our application be considered as one for a permit as a contract carrier, and that such permit be issued to us in lieu of a certificate of necessity and convenience as a common carrier. Just for the information of the Board, I would like to state or to point out that the application in the concluding prayer prayed for a certificate of convenience and necessity and is identical with that for the contract carrier permit, except that it contains additional information which is not contained in the other application, and under the rules which have been prescribed for the conduct of hearings by Joint Boards it provided that application or proceedings may be narrowed but not extended, and that such procedure would be a narrowing of the scope of the proceeding rather than a broadening of it. We believe that this applicant is a common carrier, but inasmuch as the motor carrier act and the definitions therein contained

have not been finally construed we wish to make that
889 alternative request, and we likewise, for the purpose of the record, wish at this time to renew the motion which we made at the outset of the hearing.

Exam. PEYSER: Mr. Lancaster, are you familiar with the decision in connection with the investigation of contracts and contract carriers, as to the type of contracts, mutual obligation and all that?

Mr. LANCASTER: I am not entirely familiar with it.

Exam. PEYSER: I was going to ask you if applicant would be willing to commit itself to that application.

Mr. LANCASTER: In the event it should be held as to this applicant that the service involved in this application to be that of a contract carrier, it stands ready and willing to comply with such rules and regulations of the Commission as may pertain to contract carrier, or others, it has not already complied with. I think that concludes our evidence.

Chairman GROUCHY: You don't want to brief it?

Mr. LANCASTER: I don't think we care to brief it. I would like to ask that we have a decision in this case just as soon as possible, and by way of an extenuating circumstances or urgent reasons for it, I wish to say we were first advised by the Commission that we did not need a certificate to conduct operations wholly within the state of Louisiana, and after we had inaugurated the intrastate operations, other than the Shreveport-Cypress operation, we were for the first time advised we would need a certificate from the Commission, and we have re-
890 frained from handling interstate freight, as pointed out in the application and in the evidence, and that is preventing us from realizing the real economies we hope to accomplish by the institution of the truck service.

Exam. PEYSER: Can you say when the application was filed, Mr. Lancaster?

Mr. LANCASTER: This application, I can't say.

Exam. PEYSER: It is dated March 18, 1937.

Mr. LANCASTER: I might say this application follows an application filed in the early part of 1936 for a certificate of registration as a wholly intrastate carrier.

Exam. PEYSER: Well, do you wish this application to be considered as an amendment to that application if it can be done?

Mr. LANCASTER: If it be deemed proper, and we have been informed that it would be deemed proper to file this and have it considered as an amendment.

Exam. PEYSER: Well, you understand, in order for an interim operation to be lawful application has to be filed

within 120 days after October 15th, and this application apparently was not so filed.

Mr. LANCASTER: Unless it can be construed as an amendment. It was our understanding it had already been construed as an amendment.

Exam. PEYSER: It is not clear. Do you know the number of that application?

891 (Discussion off the record.)

Exam. PEYSER: Any briefs?

Mr. LANCASTER: No, sir; we don't desire to file briefs.

Chairman GROUCHY: If there is nothing further to be presented in this case the case is closed.

(Whereupon, at 12:45 p. m., June 24th, 1937, hearing in the above-entitled matter was closed.)

891-A *Certificate of Public Convenience and Necessity*

No. MC 50544

THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY,
A CORPORATION,
DALLAS, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 10th day of October. A. D., 1941

AFTER DUE INVESTIGATION, It appearng that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, over a regular route,

Between Monahans, Tex., and Lovington, N. Mex.:
From Monahans over Texas Highway 82 to the Texas-New Mexico State line, thence over New Mexico Highway 18 to Lovington, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route points of Wink, Tex., and Eunice, N. Mex.
The service to be performed by said carrier shall be subject to the following conditions:
Service herein authorized is limited to service which is auxiliary to, or supplemental of, rail service of the Texas-New Mexico Railway Company, hereinafter called the Railway;
Said carrier shall not serve, or interchange traffic at any point not a station on the rail line of the Railway;
All contractual arrangements between said carrier and the Railway of the Texas and Pacific Railway Company, shall be reported to this Commission
891-B and shall be subject to revision, if and as it is found to be necessary in order that such arrangements shall be fair and equitable to the parties;
Such further specific conditions as we, in the future may find it necessary to impose in order to restrict said carrier's operations to service, which is auxiliary to, or supplemental of, rail servce.

And it is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

(Seal)

W. P. Bartel,
Secretary.

No. MC-50544 (Sub-No. 1)

TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION-LOUISIANA

Submitted December 1, 1937. Decided December 2, 1938.

Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with certain exceptions, over specified routes between Shreveport, New Orleans and other points in Louisiana, in interstate or foreign commerce. Certificate granted on conditions.

H. Payne Breazeale and Sam Lancaster for applicant.
J. R. McClurken for intervener.

Report of the Commission

DIVISION 5, COMMISSIONERS EASTMAN, LEE, AND ROGERS

BY DIVISION 5:

No exceptions were filed to the order recommended by joint board No. 164, to which this matter was referred, but we stayed the recommended order.

By application filed March 25, 1937,[1] The Texas and Pacific Motor Transport Company, a corporation of Dallas, Tex., seeks a certificate of public convenience and necessity authorizing operation as a common carrier by motor vehicle of general commodities, except money, explosives, and other commodities specified in its tariff, in interstate or foreign commerce between Shreveport and New Orleans, La., over the routes specified in the appendix hereto, serving only points, including intermediate points, located on the line of the Texas and Pacific Railway Company. Louisiana & Arkansas Lines intervened but did not oppose the application.

Applicant is a wholly-owned subsidiary of The Texas and Pacific Railway Company, hereinafter called the Railway, and the proposed operation will be confined to stations on the Railway. Applicant conducts other motor vehicle operations paralleling the Railway in Texas and New Mexico. It possesses authority granted by the Louisiana Pub-

[1] With respect to operations between Shreveport and Cypress, La., this application was allegedly tendered as an amendment to No. MC-67483, filed in January 1936, as a registration of operations conducted solely within one State under an appropriate certificate.

lic Service Commission authorizing intrastate operation over the routes included in this application. Due to the fact that its operations in Louisiana are not
893 physically connected with those in the other States, applicant originally registered its intrastate authority with us, and did not file an application for a certificate. Upon being advised that its interstate operations in Louisiana required it to have a certificate, applicant filed this application, although contending that such action is unnecessary; that its operations in Louisiana do not require a certificate from us, and hence that the granting of the application is not within our jurisdiction.

Applicant instituted an interstate operation between Shreveport and Cypress on September 26, 1935. Some question may arise as to whether this operation has been lawful since February 12, 1936.[2] However, applicant evinced a purpose to comply with the Motor Carrier Act, 1935, by seasonably filing its application for registration. Its contention that it does not require a certificate to conduct the proposed operations is based on the second proviso of section 206(a) of the act.[3] In this applicant overlooks the fact that since it also conducts operations by motor vehicle in Texas and New Mexico, it is not operating solely within Louisiana, and hence the proviso does not apply. While its operation between Shreveport and Cypress has, therefore, been unlawful, this is not in the circumstances a sufficient reason for denial of the certificate. Applicant has limited its operations over the other routes to strictly intrastate transportation. It owns and operates 37 trucks and 39 semi-trailers, of which 16 tractor-trailer combinations are used in Louisiana. It is financially qualified to conduct the operations proposed.

The proposed operations are to facilitate the handling of less-than-carload merchandise traffic over the Railway. The general plan is to move merchandise cars only to important

[2] Under section 206(b) of the act, the application not having been filed within 120 days of October 15, 1935.

[3] This reads as follows:

* * * *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate of foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificate and if such carrier has obtained such certificate from such board. * * *

concentration points such as Addis and Alexandria, La., and from those points by motor vehicle to destination. The distance between any two concentration points does not exceed 125 miles. The proposed truck service is to be substituted for local way-train or peddler service between such points. By the combined use of rail service and motor vehicles in this manner, applicant contends that the public will be afforded a much faster, more dependable, and more satisfactory service. Its operations to date have been profitable.

The following is an example of the manner in which the proposed service would be conducted. A rail car would be loaded at a distributing point, such as New Orleans, La., and moved out in a night train to Addis, about 90 miles, reaching the latter point about midnight. From
894 Addis the merchandise would be distributed by motor vehicle to main and branch line points during the night, so as to afford delivery thereof to consignees by 7 A. M. The train from New Orleans to Addis operates on a fast schedule, setting out full carloads only, at points which receive that much traffic, or from which distribution would ordinarily be completed by local way trains to points receiving less-than-carload shipments. Local freight trains are extremely irregular as to schedule and frequently must yield the right of way to the faster trains. Until applicant's service was instituted, it was impossible for the Railway to furnish overnight service and early morning delivery of less-than-carload shipments to consignees at points which did not receive full carloads.

On arrival of the truck at destination, the merchandise is left at the local freight depot of the Railway, and is available for early morning delivery by a local drayman at points where such service is available. Pending delivery of the traffic to the consignees it remains at the depot in the custody of the local agent, who is a joint employee of the Railway and applicant.

It is contended on behalf of applicant that through transportation of less-than-carload traffic from points such as Dallas and Fort Worth, Tex., to points east of Shreveport, and from points such as St. Louis, Mo., and Memphis, Tenn., to points south of Shreveport, will be improved by the proposed coordinated service. It is also asserted that the proposed service will afford such advantages over that of other motor common carriers as the avoidance of a multiplicity of transfers, and the elimination of controversies as

to responsibility for loss and damage in transit, which sometimes arise where a number of carriers participate in a movement. Applicant, through its railway connection, affords depot facilities and agents at all of the 73 towns involved in the application, and local pick-up-and-delivery service at 69 towns, or 95.5 percent thereof. The other motor common carriers serving the territory maintain such facilities and service at but 16, or 21.9 percent of the towns affected.

It is asserted also that the proposed service will aid merchants in the smaller towns, who find it necessary to carry a small, but extremely varied stock of goods in order to compete with merchants in the larger centers. Through applicant's service the merchants at the smaller points can, on short notice, replace items of stock as needed.

Although the Railway will not discontinue its local trains if the authority sought is granted, it expects that the elimination of the merchandise cars will speed up the handling of its carload traffic and that there will be some saving through reducing the number of stops now required in handling the less-than-carload traffic. It also anticipates some economies in its terminal operations at New Orleans through a decrease in the amount of cross-town hauling of empty cars now required. This is an expensive movement, due to the fact the New Orleans freight house of the Railway is on the east bank of the Mississippi River, whereas the main line of the Railway is on the west bank thereof. A movement of an empty car from the freight house to a train entails a switching movement on each side of the river and a ferry movement across the river at an estimated total cost of $10.76. The time required in the movement and the limited capacity of the ferry frequently makes it
necessary to leave loaded cars of important traffic out
895 of a train, so as not to delay its departure, because of
the necessity of expediting the merchandise traffic.
Applicant's present operations, which are principally intrastate, have reduced the number of cars moved out of the New Orleans terminal in the merchandise traffic from 18 to 11. It is expected that the proposed operations will reduce this number by 4 additional cars at that point, and in addition decrease the number of cars moved out of Shreveport and Alexandria in the same traffic by 2 and 9 per day, respectively. In the present handling of merchandise traffic, these cars are loaded to but a fraction of their capacity. They could be replaced by important carload traffic out of New Orleans, such as bananas, and the latter traffic given

more expedited service. As New Orleans originates more tonnage than moves inbound it is constantly necessary to bring in empty cars, and it is expected that the proposed operation would diminish the inbound movement of empties.

A considerable portion of the intrastate traffic to the territory affected moves from Dallas or other points in Texas. A shipper at Dallas, and receivers at Lecompte, Donaldsonville, Crowley, Ville Platte, Thibodaux, New Roads, and Marksville, La., testified in support of the application. The witnesses expressed the view that a speedier movement of interstate merchandise traffic would be helpful to them. Certain of these witnesses testified that the present intrastate service of the applicant was an improvement over that formerly available. Receivers at Crowley and other points now receive their merchandise from New Orleans early in the morning, instead of late in the afternoon. A witness from Mansfield, La., on the route between Shreveport and Cypress, testified that applicant's interstate service to that point enabled him to receive merchandise from Dallas from one to two days earlier than by other carriers.

Although applicant considers its operations to be those of a common carrier, it asks that it be granted a permit if we should find its operations to be those of a contract carrier. Apparently the contractual relations between applicant and the Railway only cover divisions of their joint rates and payments by applicant for its use of the Railway's facilities. The Railway receives 72 percent of the through rates, and 90 percent of applicant's net income from operations. However, while applicant's operations are limited to the transportation of merchandise from and to stations on the Railway, its holding out to the public, at least in respect of the kind of service it offers, is as broad as that of the Railway, itself. It publishes tariffs and may issue its own bills of lading. Although it may be regarded generally as an instrumentality of the Railway furnishing improved and supplementary service, we conclude that its status under the act is that of a common carrier by motor vehicle.

Applicant contends that the coordinated service it proposes will be superior to that of motor common carriers now operating in the territory involved. In the absence of testimony by independent motor carriers on this point we are not prepared to conclude that this will be true. However, it is plain that as an auxiliary and supplementary service

for the Railway, the proposed operation offers many advantages over existing rail less-than-carload service. Furthermore, the reduction in the costs of operation by the Railway generally, and the improvement in its carload service, which the record indicates would be collateral effects of the proposed operation, are clearly in the public interest. The act contemplates that carriers by rail
896 may conduct motor vehicle operations under certain conditions. Thus, in section 213(a)(1) of the act, as amended, we are authorized to approve the acquisition of control of a motor carrier by a carrier (which includes rail carriers) if we find "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." In this connection, our observations in *Pennsylvania Truck Lines, Inc., Acquisition of Control*, 1 M. C. C. 101, with respect to the purchase of a motor carrier by a rail-owned subsidiary, are pertinent. We there said:

> The proof is convincing that over some of the routes in question the railroad can "use service by motor vehicle to public advantage in its operations." The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will "unduly restrain competition." On the contrary it should have the opposite effect.

The record warrants the conclusion that public convenience and necessity require the provision by applicant in the considered territory of service supplementary and auxiliary to and coordinated with that of the Railway, but it is devoid of proof that there is need for service by applicant which is not required in such coordinated operations. The certificate to be granted to applicant should be limited accordingly. The limitations contained in our finding below are similar to those which we have provided in No. MC-61439, *Kansas City Southern Transport Co., Inc., Common Carrier Application*, decided November 12, 1938, and

the reasons for such limitations are fully set forth in the report in that case.

We find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle in interstate or foreign commerce of general commodities, except money, explosives, and other commodities specified in its tariffs, over the regular routes described in the appendix hereto, serving intermediate points, subject to the following conditions:

(1) The service to be performed by applicant shall be limited to service, which is auxiliary to, or supplemental of, rail service of the Railway;

(2) Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the Railway;

(3) Shipments transported by applicant shall be limited to those which it received from or delivers to the Railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

897 (4) All contractual arrangements between applicant and the Railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties;

(5) Such further specific conditions as we, in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

We further find that applicant is fit, willing, and able to properly perform such service and to conform to the provisions of the act and our rules and regulations thereunder; that a certificate authorizing such operation should be issued; and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application, except to the extent that operations are authorized herein.

EASTMAN, *Commissioner*, concurring:

What I said in a concurring expression in *Kansas City Southern Transport Company, Inc. Common Carrier Application*, M. C. C. , decided November 12, 1938, is equally applicable here.

Commissioner Rogers dissents.

898 No. MC-50544 (Sub-No. 1)

Appendix

DESCRIPTION OF ROUTES

1. Between New Orleans and Port Allen, La., over U. S. Highway 90 to Luling, La., thence over Louisiana Highway 30 to White Castle, La., thence over Louisiana Highway 30 or Louisiana Highway 168 to Port Allen.
2. Between Donaldsonville and Thibodaux, La., over Louisiana Highway 29, or Louisiana Highway 77.
3. Between Port Allen and Innis, La., over Louisiana Highway 319 to Lobdell, La., thence over Louisiana Highway 30 to Chamberlin, La., thence over Louisiana Highway 135 to Glynn, La., thence over Louisiana Highway 30 via New Roads, La., to Innis.
4. Between Innis and Torras, La., over Louisiana Highway 49.
5. Between Port Allen and New Roads over U. S. Highway 190, thence over Louisiana Highway 93 or Louisiana Highways 93 and 30 to New Roads.
6. Between Port Allen and Rosedale, La., over Louisiana Highway 1.
7. Between Innis and Long Bridge, La., over Louisiana Highway 30.
8. Between Long Bridge and Marksville, La., over Louisiana Highway 30 or Louisiana Highway 57.
9. Between Marksville and Alexandria, La., over Louisiana Highway 5.
10. Between Marksville and Bunkie, La., over Louisiana Highway 5.
11. Between Long Bridge and Bunkie over Louisiana Highway 30 or Louisiana Highway 393.
12. Between New Roads junction and Livonia, La., over U. S. Highway 190.
13. Between Livonia and Grosse Tete, La., over Louisiana Highway 1 to Rosedale, thence over Louisiana Highway 65 to Grosse Tete.
14. Between Livonia and Fordoche, La., over Louisiana Highway 1 or U. S. Highway 190 to Lottie, La., thence over Louisiana Highway 41 to Fordoche.
15. Between Lottie and Krotz Springs, La., over U. S. Highway 190.
16. Between Krotz Springs and LeBeau, La., over Louisiana Highway 216 to Melville, La., thence over Louisiana Highway 1 to LeBeau.
17. Between Krotz Springs and Meeker, La., over U. S. Highway 71.
18. Between Krotz Springs and Opelousas, La., over U. S. Highway 190.

899 19. Between Opelousas and Ville Platte, La., over Louisiana Highway 22.

20. Between Opelousas and Eunice, La., via Lawtell, La., over U. S. Highway 190.

21. Between Lawtell and Alexandria over Louisiana Highway 375 to Church Point, La., thence over Louisiana Highway 40 to Rayne, La., thence over U. S. Highway 90 to Crowley, La., thence over Louisiana Highway 26 to Eunice, thence over Louisiana Highway 119 to Ville Platte, thence over Louisiana Highway 22 to junction with Louisiana Highway 23, thence over Louisiana Highway 23 to Bayou Chicot, La., thence over Louisiana Highway 218 to Turkey Creek, La., thence over Louisiana Highway 26 to Meeker, La., thence over U. S. Highway 71 to Alexandria.

22. Between Eunice and Turkey Creek over Louisiana Highway 26.

23. Between Alexandria and Cypress, La., over Louisiana Highway 20.

24. Between Derry and Bermuda, La., over Louisiana Highway 423.

25. Between Cypress and Shreveport, over Louisiana Highway 20 to Natchez, La., thence over Louisiana Highway 230 to Natchitoches, La., thence over Louisiana Highway 20 to Shreveport, or over Louisiana Highway 75 to Robeline, La., thence over Louisiana Highway 1 to Belmont, La., thence over U. S. Highway 171 to Shreveport.

26. Between Robeline and Natchitoches over Louisiana Highway 6.

27. Between Alexandria and Shreveport over U. S. Highway 71.

And return over the same routes, serving all intermediate points on the Railway.

900 ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 2nd day of December, A. D. 1938.

No. MC-50544 (Sub-No. 1)

TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
COMMON CARRIER APPLICATION—LOUISIANA

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report containing its

findings of fact and conclusions thereon, which report is made a part hereof:

It is Ordered, That said application be, and it is hereby, denied, effective January 12, 1939, except to the extent that the issuance of a certificate of public convenience and necessity is authorized by the findings in said report.

It is Further Ordered, That applicant be, and it is hereby, notified and required to cease and desist, on or before January 12, 1939, from operations as a motor carrier covered by said application other than those authorized in said report.

By the Commission, division 5.

(seal)

W. P. Bartel
Secretary

901 *Certificate* C-15

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 31st day of May, A. D. 1939.

No. MC 50544—Sub. 1

Application of The Texas and Pacific Motor Transport Company, a Corporation, Dallas, Texas

Investigation of the matters and things involved in this proceeding having been made, said Division having made and filed a report and order containing its findings of fact and conclusions thereon, which report and order are hereby referred to and made a part hereof:

It is Hereby Certified, That the present and future public convenience and necessity require operation by the said applicant, and it is hereby authorized to engage in interstate or foreign commerce, on and after May 31, 1939, as a common carrier by motor vehicle of the commodities indicated, over regular routes, between fixed termini, and to and from intermediate points, as specified below:

Commodities generally, except those of unusual value, and except high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between points in Louisiana, as follows:

From New Orleans over U. S. Highway 90 to Luling, La., thence over Louisiana Highway 30 via White Castle, La., to Port Allen (also from White Castle over Louisiana Highway 168 to Port Allen);

From Donaldsonville over Louisiana Highway 29 to Thibodaux;
From Donaldsonville over Louisiana Highway 77 to junction Louisiana Highway 83, thence over Louisiana Highway 83 to Thibodaux;
From Port Allen over Louisiana Highway 319 to Lobdell, La., thence over Louisiana Highway 30 to Chamberlin, La., thence over Louisiana Highway 135 to Glynn, La., and thence over Louisiana Highway 30 to Innis;
From Innis over Louisiana Highway 49 to Torras;
From Port Allen over U. S. Highway 190 to junction Louisiana Highway 93, thence over Louisiana Highway 93 to New Roads;
902 From Port Allen over U. S. Highway 190 to junction Louisiana Highway 93, thence over Louisiana Highway 93 to junction Louisiana Highway 30, and thence over Louisiana Highway 30 to New Roads;
From Port Allen over Louisiana Highway 1 to Rosedale;
From Innis over Louisiana Highway 30 to Longbridge;
From Longbridge over Louisiana Highway 30 to Marksville;
From Longbridge over Louisiana Highway 57 to Marksville;
From Marksville over Louisiana Highway 5 to Alexandria;
From Marksville over Louisiana Highway 5 to Bunkie;
From Longbridge over Louisiana Highway 30 to Bunkie;
From Longbridge over Louisiana Highway 393 to Bunkie;
From New Roads Junction over U. S. Highway 190 to Livonia;
From Livonia over Louisiana Highway 1 to Rosedale, La., thence over Louisiana Highway 65 to Grosse Tete;
From Livonia over Louisiana Highway 1 to Fordoche;
From Livonia over Louisiana Highway 7 to Lottie, La., thence over Louisiana Highway 41 to Fordoche;
From Lottie over U. S. Highway 190 to Krotz Springs;
From Krotz Springs over Louisiana Highway 216 to Melville, La., thence over Louisiana Highway 1 to LeBeau;

From Krotz Springs over U. S. Highway 71 to Meeker;
From Krotz Springs over U. S. Highway 190 to Opelousas;
From Opelousas over Louisiana Highway 22 to Ville Platte;
From Opelousas over U. S. Highway 190 to Eunice;
From Lawtell over Louisiana Highway 375 to Church Point, La., thence over Louisiana Highway 40 to Rayne, La., thence over U. S. Highway 90 to Crowley, La., thence over Louisiana Highway 26 to Eunice, La., thence over Louisiana Highway 119 to Ville Platte, La., thence over Louisiana Highway 22 to junction Louisiana Highway 23, thence over Louisiana Highway 23 to Bayou Chicot, La., thence over Louisiana Highway 218 to Turkey Creek, La., thence over Louisiana Highway 26 to Meeker, La., and thence over U. S. Highway 71 to Alexandria;
From Eunice over Louisiana Highway 26 to Turkey Creek;
From Alexandria over Louisiana Highway 20 to Cypress;
From Derry over Louisiana Highway 423 to Bermuda;
From Cypress over Louisiana Highway 20 to Natchez, La., thence over Louisiana Highway 230 to Natchitoches, La., and thence over Louisiana Highway 20 to Shreveport, La.;
From Cypress over Louisiana Highway 75 to Robeline, La., thence over Louisiana Highway 1 to junction U. S. Highway 171, and thence over U. S. Highway 171 to Shreveport;
From Robeline over Louisiana Highway 6 to Natchitoches;
From Alexandria over U. S. Highway 71 to Shreveport; and
Return over these routes to the above-specified origin points.
All intermediate points on the above-specified routes which are points on The Texas and Pacific Railway Company.
The operations authorized herein are subject to the following conditions:

The service to be performed by applicant herein shall be limited to service, which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company;

Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of The Texas and Pacific Railway Company;

Shipments transported by applicant shall be limited to those which it receives from or delivers to The Texas and Pacific Railway Company under a through bill of lading covering in addition to movement by applicant, a prior or subsequent movement by rail;

All contractual arrangements between applicant and The Texas and Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as it is found to be necessary in order that such arrangements shall be fair and equitable to the parties;

Such further specific conditions as the Commission, in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

It is Ordered, That this certificate shall remain in force for such period as the said carrier shall continue to perform the services herein authorized, unless revoked in accordance with the provisions of the Motor Carrier Act, 1935.

It is Further Ordered, That operations pursuant to this certificate shall be subject to such terms, conditions, and limitations as have been, or may be hereafter, prescribed by the Commission.

By the Commission, division 5.

W. P. Bartel
Secretary

(seal)

904 Interstate Commerce Commission

No. MC-50544 (Sub-No. 2)

The Texas and Pacific Motor Transport Company
Extension, Wills Point-Gladewater, Tex.

Submitted March 6, 1939 Decided May 27, 1939

Public convenience and necessity found to require extension of operation by applicant as a common carrier by motor vehicle of general commodities, with certain exceptions, in interstate or foreign commerce, between Wills Point and Gladewater, Tex., over a specified route. Certificate granted, subject to conditions.

Sam Lancaster, W. O. Reed, and R. S. Shapard
for applicant

DIVISION 5, COMMISSIONERS EASTMAN, LEE and ROGERS

BY DIVISION 5:

Exceptions were filed by applicant to the order recommended by joint board No. 77.

By application filed October 19, 1937, The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., seeks a certificate of public convenience and necessity authorizing extension of operation as a common carrier by motor vehicle of general commodities, except money, high explosives, and uncrated vegetables, in interstate or foreign commerce, between Wills Point and Gladewater, Tex., including all intermediate points, over U. S. Highway 80. No one opposed the application. After the hearing a letter of protest was received from the Railway Labor Executives' Association.

Applicant is a wholly owned subsidiary of The Texas and Pacific Railway Company, hereinafter called the railway. The proposed service will be between stations on the railway. Trucks are at present being operated over the route in intrastate commerce pursuant to a certificate of public convenience and necessity issued by the Railroad Commission of Texas. A coordinated rail and truck service over the route with respect to intrastate commerce is in effect, and applicant seeks authority to conduct the same character of service with reference to commodities moving in interstate commerce. It is intended to be a supplement to the through freight train service on carload lots and a substitute for certain of the local freight train cars now handling less-than-carload traffic. By such coordinated rail and truck service the movement of freight can be expedited, to the benefit of the receiving and shipping public along the route. At each point along the route applicant and the railway maintain joint station facilities and resident agents. Local draymen are employed at the principal points for pick-up and delivery service on less-than-carload freight.

905 A coordinated rail and truck service in both interstate and intrastate commerce is at present being carried on by applicant and the railway between Dallas and Wills Point, Tex., and between Gladewater, Tex., and Shreveport, La. The proposed operation will link up these separated services. Applicant's existing operating rights east and west of the proposed route were acquired by pur-

chase from the Southern Transportation Company. See *Texas & P. Motor Transport Co.—Purchase—Southern*, 5 M. C. C. 653. Other operations conducted by applicant are set out in *Texas & P. M. T. Co.—Purchase—Johnson*, 5 M. C. C. 89, *Texas & Pac. M. Transport Co. Com. Car, Applic.—Louisiana*, 10 M. C. C. 525, and No. MC-50544, *Texas & Pacific Motor Transport Company Common Carrier Application*, M C. C. , decided March 2, 1939. Applicant's fitness and ability, financially and otherwise, properly to conduct the proposed services is unquestioned.

Freight moving to points between Wills Point and Gladewater in less-than-carload lots will be expedited from 12 to 24 hours by transferring same to trucks from set out merchandise cars, and delivering in this manner to the smaller intermediate points along the route east and west of Mineola. At present, the local freight train from Dallas to Mineola operates only every other day. A similar local freight service of three days a week is operated on the division east from Mineola over the proposed route. Owing to variable amounts of switching to be done by these local freights at the points served, it is not possible for applicant and the railway to meet the demands of shippers for a regular and dependable service without the inauguration of a truck service in coordination with the rail service. It is estimated that at least four rail cars now operating, partially loaded with interstate freight, can be eliminated by the use of trucks on the proposed route, thereby not only effecting a saving of from 12 to 24 or more hours time in delivery of less-than-carload freight, but also permitting faster movement on carload freight in the same trains and other economies in the rail operation. Several merchants who receive freight at points along the route testified to the present slow service they are receiving by rail, and their need for and the convenience of, the more frequent and faster rail and truck service proposed by applicant, so as to better meet the demands of the buying public in the trade territories they serve.

The primary purpose of applicant is to afford an improved service to the public along the route, through the medium of a coordinated rail and truck service, which the evidence of record indicates is needed by, and will be a distinct convenience to, the shipping and receiving public along the route.

Applicant's exceptions are directed solely against the imposition of the proposed condition that shipments transported shall be limited to those which it receives from or

delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail. It maintains that it should be permitted to operate over the route in those instances where the entire transportation will be by truck for the reason that there are no other motor carriers operating over the route with which applicant will be in competition in this respect. The record in this proceeding contains no proof of a need for motor carrier service except in conjunction with shipments moving also by rail. The entire
906 evidence is directed to the furnishing of a more frequent service by coordinated rail and motor operations than that now being accomplished by all-rail service. The principal witness for applicant stated that the primary objective of the application is the furnishing of a service that will be auxiliary to the existing rail service. There is no evidence of any need for any additional motor truck service other than this coordinated rail-truck service. The entire tonnage which would be affected by the coordinated service now amounts to about 7,800 pounds per day, of which 30 percent is estimated to be moving in interstate commerce. No witnesses testified as to their need for additional motor truck service not connected with a prior or subsequent movement by rail. All the shipper witnesses stated that what they desired was faster service on their interstate freight now moving by rail to or from points outside of Texas. The record does not bear out any demand for all-truck service between points along the proposed route where a prior or subsequent rail movement is not involved. The certificate to be granted to applicant should be limited accordingly. The limitations contained in our finding and the reasons therefor are similar to those set out in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, and *Texas & Pac. M. Transport Co. Com. Car. Applic.—Louisiana, supra*.

We find that the present and future public convenience and necessity require extension of operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, except money, high explosives, and uncrated vegetables, between Wills Point and Gladewater, Tex., including all intermediate points, over U. S. Highway 80, subject to the following conditions:

(1) The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the railway.

(2) Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railway.

(3) Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

(4) All contractual arrangements between applicant and the railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

(5) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

907 We further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder; that a certificate authorizing such operation should be issued; and that in all other respects the application should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application, except to the extent that operations are authorized herein.

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 27th day of May, A. D. 1939

No. MC-50544 (Sub-No. 2)

The Texas and Pacific Motor Transport Company Extension, Wills Point-Gladewater, Tex.

Investigation of the matters and things involved in this proceeding having been made, and said division on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It Is Ordered, That said application be, and it is hereby denied, effective July 19, 1939, except to the extent indicated by the findings in said report.

By the Commission, division 5.

W. P. Bartel
Secretary

(Seal)

908 *Certificate*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 7th day of August, A. D., 1939

No. MC 50544-Sub. 2

Application of
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
a corporation, Dallas, Texas

Investigation of the matters and things involved in this proceeding having been made, said Division having made and filed a report and order containing its findings of fact and conclusions thereon, which report and order are hereby referred to and made a part hereof:

IT IS HEREBY CERTIFIED, That the present and future public convenience and necessity require operation by the said applicant, and it is hereby authorized to engage in interstate or foreign commerce, on and after August 7, 1939, as a common carrier by motor vehicle of the commodities indicated, over the regular route, between fixed termini, and to and from intermediate points, as specified below:

COMMODITIES GENERALLY, except money, high explosives, and uncrated vegetables,

Between Wills Point, Tex., and Gladewater, Tex.:

From Wills Point over U. S. Highway 80 to Gladewater, and return over the same route.

All intermediate points, which are stations on the rail line of The Texas and Pacific Railway Company.

Service herein authorized is subject to the following conditions:

The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company.

Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of The Texas and Pacific Railway Company.

Shipments transported by applicant shall be limited to those which it receives from or delivers to The Texas and Pacific Railway Company under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

909 All contractual arrangements between applicant and The Texas and Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as it is found to be necessary in order that such arrangements shall be fair and equitable to the parties.

It Is Ordered, That this certificate shall remain in force for such period as the said carrier shall continue to perform the services herein authorized, unless revoked in accordance with the provisions of the Motor Carrier Act, 1935.

It Is Further Ordered, That operations pursuant to this certificate shall be subject to such terms, conditions, and limitations as have been, or may be hereafter, prescribed by the Commission.

By the Commission, division 5.

W. P. Bartel
(Seal) *Secretary*

910 Interstate Commerce Commission

No. MC-50544 (Sub-No. 2)

The Texas and Pacific Motor Transport Company
Extension, Wills Point-Gladewater, Tex.
Decided December 31, 1941

Upon further reconsideration, conditions attached to certificate granted in prior report, 14 M. C. C. 645, as modified by report on reconsideration decided September 4, 1941, M. C. C. , authorizing operation, in interstate or foreign commerce, by applicant as a common carrier by motor vehicle of general commodities, with certain exceptions, over a regular route between Wills Point and Gladewater, Tex., modified. Issuance of a certificate authorized on compliance with certain conditions and order entered vacating and setting aside the prior order and denying the application in part.

Appearances as shown in prior reports.

Report of the Commission on Further Reconsideration

Division 5, Commissioners Eastman, Lee and Rogers

By Division 5:

The application herein considered has been the subject of a prior report in 14 M. C. C. 645, and a report on reconsideration decided September 4, 1941, M. C. C. .

Upon petition of applicant the matter has again been reopened for reconsideration on the present record by our order of November 3, 1941.

Applicant is a wholly-owned subsidiary of The Texas and Pacific Railway Company, hereinafter referred to as the railway, and was issued a certificate of public convenience and necessity October 21, 1941, under the considered application authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, with certain exceptions and subject to certain conditions, over a regular route between Mills Point and Gladewater, Tex., in rendering a service which is
911 auxiliary to, or supplemental of, the rail service of the railway. Among the conditions imposed is the following:

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to The Texas and Pacific Railway Company under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

By the instant petition applicant asks that this condition be eliminated.

Applicant is engaged in motor vehicle service to and from points which are stations on the rail line of the railway over routes paralleling the rail line between Dallas and Wills Point, Tex., and between Gladewater, Tex., and Shreveport, La. These operations were acquired by purchase in *Texas & P. Motor Transport Co.—Purchase—Southern Transp.*, 5 M. C. C. 653. The instant operation links these operations. All points involved are small way-stations in the Dallas and Shreveport trade territory. None has through train service except Mineola, which has through train service from Dallas. Inbound traffic moves in through train service at night from Dallas to Mineola and from Shreveport to Longview, a short distance east of Gladewater, from which points early morning delivery is effected by truck, but, as applicant points out, traffic originating at Shreveport which comes to the railroad following departure of the through train must, because of the condition imposed, be held over and dispatched by train the next night, resulting in a delay of as much as 24 hours, although applicant has trucks operating over the route to and from

Shreveport handling other traffic and which could easily handle this traffic with dispatch affording same day delivery. A similar situation is said to exist in connection with interstate shipments destined to the points involved arriving at Dallas in pool cars or freight-forwarding cars because, while they have had a prior movement by rail, they do not move out of Dallas on a through bill of lading. Of course, traffic originating at Dallas following departure of the through train receives prompt delivery by motor vehicle, since it involves movements in intrastate commerce. Thus applicant asserts the condition imposed prevents prompt handling of a substantial quantity of interstate tonnage destined to the points involved and at the same time benefits no one, since there is no interstate motor vehicle service to or from the points involved over this route other than that afforded by applicant.

912

A similar condition was considered and rejected by the Commission on oral argument and reconsideration in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5, and in lieu thereof another condition was imposed which prohibits the handling of interstate shipments by motor vehicle between points where through-train service is maintained but otherwise permits motor vehicle service which is auxiliary to, or supplemental of, rail service in the handling of shipments regardless of whether they involve a prior or subsequent movement by rail. That decision is controlling here, but there is no need for imposing a condition similar to that imposed by the Commission in the case cited. The operation in question extends a distance of but 64 miles and no through-train service is maintained between any of the small way-station points here involved. Under the circumstances we are of the opinion that the relief prayed for in the petition should be granted.

We affirm the findings in the prior reports except that we find that condition 3 should be eliminated. An order will be entered denying the application herein considered except to the etxent that a certificate is granted in the prior reports as modified herein.

913

As before stated, a certificate has been issued in this application and applicant will be expected, as of the effective date of the order herein, to surrender such certificate whereupon an amended certificate conforming with the conclusions herein will be issued.

COMMISSIONER ROGERS was absent and did not participate.

914 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 31st day of December, A. D. 1941

No. MC-50544 (Sub-No. 2)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION, WILLS POINT-GLADEWATER, TEX.

IT APPEARING, That by an order of November 3, 1941, this proceeding was reopened for further reconsideration on the record as made:

AND IT FURTHER APPEARING, That such further reconsideration of the matters and things involved has been given, and that said division, on the date hereof, has made and filed a report on further reconsideration herein containing its findings of fact and conclusions thereon, which report and the prior reports and accompanying orders are hereby referred to and made a part hereof;

IT IS ORDERED, that the order of September 4, 1941, be, and it is hereby, vacated and set aside insofar as it relates to the application here involved;

AND IT IS FURTHER ORDERED, That said application, except to the extent that a certificate is granted by the prior reports in this proceeding and by the said report on further reconsideration, be, and it is hereby, denied, effective February 17, 1942.

By the Commission, division 5.

W. P. BARTEL
Secretary

(Seal)

915 Interstate Commerce Commission

No. MC-50544 (Sub-No. 3)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION, BIG SPRING-PECOS, TEX.

Submitted February 23, 1939 Decided May 27, 1939

Public convenience and necessity found to require extension of operation by applicant as a common carrier by motor vehicle, of general commodities, with certain exceptions, in interstate or foreign commerce, between Big Spring and Pecos, Tex., over specified route. Certificate granted, subject to conditions.

SAM LANCASTER, W. O. REED, and R. S. SHAPARD for applicant.

FRANK H. RAWLINGS and B. A. CARTER for protestants.

Report of the Commission

DIVISION 5, COMMISSIONERS EASTMAN, LEE and ROGERS

BY DIVISION 5:

Exceptions were filed by applicant to the order recommended by joint board No. 77. Our conclusions differ slightly from those recommended.

By application filed October 26, 1937, The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., seeks a certificate of public convenience and necessity authorizing extension of operation as a common carrier by motor vehicle, of general commodities, except money, high explosives, and uncrated vegetables, in interstate or foreign commerce, between Big Spring and Pecos, Tex., including all intermediate points, over U. S. Highway 80. The Merchants Fast Motor Lines and Sunset Truck Lines, Inc., opposed the application. After the hearing the Railway Labor Executives' Association advised by letter that they were opposed to the granting of the authority sought herein by applicant.

Applicant is a wholly owned subsidiary of The Texas and Pacific Railway Company, hereinafter referred to as the railway. The proposed service will be between stations on said railway and is contemplated as a supplement to the through freight train service, as well as a substitute for a portion of the local less-than-carload rail service. Such truck operations are now being conducted over the route with respect to intrastate commerce under a certificate of public convenience and necessity from the Railroad Commission of Texas, and applicant seeks to effect similar coordinated rail and truck service with reference to interstate traffic moving into and out of points along the proposed route. At each point to be served applicant and the railway maintain joint station facilities and resident agents. Local draymen are employed for pick-up and delivery service on less-than-carload freight.

916

Both interstate and intrastate operations in conjunction with the railway are now conducted by applicant between Monahans, Tex., a point on the considered route, and Lovington, N. Mex., and between Big Spring and Dallas, Tex. It now operates 44 units of equipment and past operations

have aggregated approximately three and one-half million truck miles. It is represented that no new equipment will be needed for the proposed handling of the interstate traffic, over the considered route, which traffic is estimated to amount to about 25 percent of the total tonnage moving to and from points thereon. There is no question as to applicant's ability, either financially, or otherwise, or its fitness and willingness, properly to conduct the proposed service in accordance with the provisions of the Motor Carrier Act, 1935, and our requirements, rules, and regulations thereunder.

The bulk of the freight which appellant proposes to handle now moves into points between Big Spring and Pecos by rail. That destined to points along the Texas-New Mexico Railway, a subsidiary of The Texas and Pacific Railway Company, between Monahans and Lovington is now transferred at Monahans from the rail cars to the trucks of applicant for ultimate delivery. A considerable amount of oil field equipment destined to supply houses, distributors, and consumers in this territory, originates at Dallas, Fort Worth, and other points in Texas, and also at more distant manufacturing centers, such as Chicago, Kansas City, St. Louis, Memphis, and New Orleans. At present, the railway operates a fast freight out of Dallas each night at 8 p. m. with set out cars of less-than-carload freight for such points as Big Spring, Midland, Odessa, and Monahans, arriving at Big Spring about 4 a. m. and at Monahans about 8 a. m. the next morning. It then operates as a local freight between Monahans and Pecos. A baggage car of less-than-carload freight is also operated out of El Paso, Tex., each night at 10 p. m. arriving at Monahans at 4:15 a. m., from which point to Big Spring traffic is handled by local freight train. Freight for points between Monahans and Pecos is delayed before moving west, depending upon the amount of switching service to be performed at Monahans. By transferring freight from rail cars to trucks the delivery service to points east of Monahans not having set out cars and to points between Monahans and Pecos can be expedited from a few hours to as much as 48 hours. The Pecos Valley Southern Railway Company, a subsidiary of the railway, operates from Pecos to Toyahvale, a train leaving Pecos at noon. By the use of trucks between Monahans and Pecos delivery service on this line can be speeded up 24 hours, as the local freight train west arrives too late to make the noon connection. A

similar saving on time of delivery of freight coming east from El Paso and destined to points on the Pecos Valley Southern would be made.

917 Freight originating between Big Spring and Pecos destined for points east of Big Spring will be hauled by truck to Big Spring in time to connect with the 2 a. m. through rail car for Fort Worth. At present, such traffic is handled by local freight train to Big Spring, where it is consolidated over night. Such service would be speeded up 24 hours by the proposed use of trucks. Further improved service is contemplated between the oil field supply centers in Midland, Odessa, and Big Spring and retail supply stores in the oil producing territory along the Texas-New Mexico Railway adjacent to Jal, Eunice, Hobbs, and Lovington, N. Mex., by the operation of a double daily truck service.

The proposed rail-truck operation would afford a better service to the receiving public along the route on freight originating at St. Louis by giving second morning instead of third morning delivery. At present, a train leaves St. Louis at about 6 p. m., arriving at Fort Worth at 11 p. m. the next evening, where the freight destined to Big Spring and beyond lies over almost 24 hours until the fast freight from Dallas at 8 p. m. can pick it up. Although the St. Louis train, which arrives at Fort Worth at 11 p. m., proceeds to Big Spring, there is no way of delivering such freight beyond Big Spring except to await the arrival of the Dallas train the next day. Movement of such freight through to Big Spring on the St. Louis train, and beyond by use of the proposed truck service, would enable delivery to consignees 24 hours earlier than by use of existing all-rail service.

The record contains considerable evidence from a number of shippers and receivers of freight along the proposed route indicating the convenience of and the need for the proposed expedited rail-truck service. The interstate tonnage moving into and out of points along the proposed route other than Big Spring is stated to be about 9,000 pounds daily. Applicant takes exception to the third condition recommended by the joint board which would limit shipments transported in the proposed service to those having a prior or subsequent movement by rail. It seeks exemption from this condition especially with reference to freight moving between points from Big Spring to Pecos, on the one hand, and points in New Mexico along the route of the

Texas-New Mexico Railway between Monahans, Tex., and Lovington, N. Mex., on the other hand. In addition to one train a day, which is irregularly operated over this branch or feeder line, there are at least two schedules a day by applicant's trucks now operating in auxiliary motor carrier service between Monahans and Lovington. It contends that no prior or subsequent rail service could be used to any advantage on movements between points on the proposed route and points in New Mexico on the Monahans to Lovington route, and that the record indicates a need for such all truck service.

Several representatives of oil field equipment supply houses located principally at Odessa, Midland, and
918 Big Spring testified to the movement of such supplies to New Mexico points along the line from Monahans to Lovington where they have branch supply stores. Such interstate movements do not appear to be of any great continuing volume but rather more in the nature of interchange shipments between branch stores in emergencies. For instance, the Republic Supply Company at Odessa ships to its New Mexico store at Hobbs only when it is out of something or there is a call for something it does not carry. The record shows there are from 35 to 50 oil field equipment supply stores in the vicinity of Hobbs, N. Mex., which supply the immediate needs of that industry in that territory. In general these witnesses use the present available rail and truck services; have experienced certain delays at times; and desire more frequent and faster service. A number of them have maintained their own trucks for the movement of rush shipments when carriers for hire are not available. It appears from their testimony that no matter how frequent a service is available there will always be occasions when emergency shipments require movement by private truck. Some of the witnesses for the oil field supply houses indicated no dissatisfaction with the existing services available, while others would like to have additional services made available.

The protesting motor carrier lines offered evidence to show that twice daily schedules were in effect between points on the proposed route and New Mexico points for the movement of oil field supplies. The Merchants Fast Motor Lines operates from Dallas through Big Spring to Odessa where connections are made with the Sunset Lines for freight destined to points west thereof and with the Lubbock-El Paso Freight Lines for freight moving to

points in New Mexico along the route used by applicant as far as Hobbs. Connections are made at 8 a. m. and 12 noon each day. Connection is also made with Elite Truck Lines at Odessa for points between Monahans and Pecos. These common carriers indicate that there is not a large amount of interstate freight available between points on the proposed route and New Mexico points on the Monahans to Lovington route; that not more than 10 or 15 percent of their tonnage is interstate commerce; that they have ample facilities and equipment available for all that may be offered; and that the special commodity carriers known as oil field equipment haulers transport most of this traffic between these points.

Applicant admits that the bulk of the traffic to be handled in the proposed service is that which arrives at points on the route after a prior movement by rail, and that the territory between Big Spring and Pecos is principally a consuming territory. In connection with such freight the record definitely shows the public advantages which would accrue from a coordinated rail-truck service, as well as the need for same. As to the freight which may be available for movement between points on the proposed route and points in New Mexico between Monahans and Lovington there is no sufficient showing that the existing common carriers facilities do not adequately provide for the normal public needs in this respect. The pri-
919 mary purpose of applicant is to afford an improved service to the public along the route through the medium of a coordinated rail and truck service to points along such route not now receiving a satisfactory all rail service. We think the certificate to be granted should be limited accordingly. The limitations contained in our findings and the reasons therefor are similar to those set out in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, and *Texas & Pac. M. Transport Co. Com. Car. Applic.—Louisiana*, 10 M. C. C. 525.

We find that the present and future public convenience and necessity require extension of operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, except money, high explosives, and uncrated vegetables, between Big Spring and Pecos, Tex., including all intermediate points, over U. S. Highway 80, subject to the following conditions:

(1) The service to be performed by applicant shall be limited to service, which is auxiliary to, or supplemental of, rail service of the railway and its subsidiary rail lines.

(2) Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railway.

(3) Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway or its subsidiary rail lines under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

(4) All contractual arrangements between applicant and the railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

(5) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder; that a certificate authorizing such operation should be issued; and that in all other respects the application should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act, and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application except to the extent that operations are authorized herein.

920 *Order*

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 27th day of May, A. D. 1939

No. MC-50544 (Sub-No. 3)

The Texas and Pacific Motor Transport Company Extension, Big Spring-Pecos, Tex.

Investigation of the matters and things involved in this proceeding having been made, and said division, on the

date hereof, having made and filed a report containing the findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application be, and it is hereby denied, effective July 19, 1939, except to the extent indicated by the findings in said report.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(Seal)

921 *Certificate*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 2nd day of December, A. D. 1939

No. MC 50544 Sub 3

APPLICATION OF THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

Investigation of the matters and things involved in this proceeding having been made, said Division having made and filed a report and order containing its findings of fact and conclusions thereon, which report and orders are hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity requires operation by the said applicant and it is hereby authorized to engage in interstate or foreign commerce, on and after December 2, 1939, as a common carrier by motor vehicle of the commodities indicated, over the regular route, between fixed termini, and to and from intermediate points, as specified below:

General commodities, except money, high explosives, and uncrated vegetables,

Between Big Spring, Tex., and Pecos, Tex.:

From Big Spring over U. S. Highway 80 to Pecos, and return over the same route.

All intermediate points.

The operations authorized herein are subject to the following conditions:

The service to be performed by applicant herein shall be limited to service, which is auxiliary to, or supplemental of, rail service of the Texas and Pacific Railway Company and its subsidiary rail lines;

Applicant shall not serve, or interchange traffic at, any point not a station on a rail line on The Texas and Pacific Railway Company;

Shipments transported by applicant shall be limited to those which it receives from or delivers to The Texas and Pacific Railway Company or its subsidiary rail lines under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail;

922 All contractual arrangements between applicant and The Texas and Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as it is found to be necessary in order that such arrangements shall be fair and equitable to the parties;

Such further specific conditions as the Commission, in the future may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

It is Ordered, That this certificate shall remain in force for such period as the said carrier shall continue to perform the services herein authorized, unless revoked in accordance with the provisions of the Motor Carrier Act, 1935.

It is Further Ordered, That operations pursuant to this certificate shall be subject to such terms, conditions, and limitations as have been, or may be hereafter, prescribed by the Commission.

By the Commission, division 5.

W. P. Bartel,
(seal) *Secretary.*

923 Interstate Commerce Commission

No. MC-50544 (Sub-No. 4)

The Texas and Pacific Motor Transport Company
Extension, Marshall-Texarkana, Tex.

Submitted April 17, 1939 Decided November 20, 1939

Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, in coordinated train-truck service, of general commodities, with certain exceptions, in interstate or foreign commerce, between Marshall and Texarkana, Tex., over a specified route. Certificate granted subject to conditions, and application denied in all other respects.

Sam Lancaster, W. O. Reed, and R. S. Shapard for applicants.

O. L. Kinsley, Joe E. Steadman and L. C. Stamper for interveners.

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND ALLDREDGE

BY DIVISION 5:

Exceptions were filed by applicant to the order recommended by the joint board. Our conclusions accord with those recommended.

By application filed October 29, 1937, The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., seeks a certificate of public convenience and necessity, under the Motor Carrier Act, 1935, authorizing extension of operation as a common carrier by motor vehicle, of general commodities, except money, high explosives, corpses, and uncrated vegetables, in interstate or foreign commerce, between Marshall and Texarkana, Tex., over U. S. Highway 59 and Texas Highway 47, serving all intermediate points and serving Lodi, Kildare, Bivins, Springdale, and Sulphur, Tex., as off-route points. The Brotherhood of Railway Clerks and the Brotherhood of Railway Telegraphers intervened in support of the application. The Brotherhood of Railway Trainmen and an organization of transportation employees of Texas intervened as their interests might appear. No motor or rail carriers oppose the application. After the hearing, the
924 Railway Labor Executives' Association advised by letters that they were opposed to the granting of the authority sought.

Applicant is a wholly owned subsidiary of The Texas and Pacific Railway Company, hereinafter referred to as the Texas and Pacific. With one exception, the proposed service will be between stations on the line of the Texas and Pacific. The only point to be served which is not on the Texas and Pacific but which is on the proposed highway route is Linden, Tex. The Jefferson & Northwestern Railroad, hereinafter called the Jefferson and Northwestern, operates from Jefferson, Tex., to Linden, a distance of approximately 20 miles. Its freight service is infrequent, a train being operated only on such days as traffic is offered. Applicant proposes to handle freight for Linden on a division-of-rate arrangement with the Jefferson and Northwestern. The off-route points of Lodi, Kildare, Bivins, Springdale, and Sulphur are on the Texas and Pacific and within a few miles of the proposed highway. These will be served by truck over unnumbered highways in conjunction with the highways named but only when road conditions permit. Applicant has filed with the Railroad Com-

mission of Texas an application for authority to conduct a similar intrastate service over the route. The intrastate application and the instant interstate application were heard together.

A coordinated train-truck service in both interstate and intrastate commerce is now rendered by applicant and the Texas and Pacific along much of the latter's main line from New Orleans, La., to El Paso, Tex. See *Texas & P. Motor Transport Co. Com. Car. Applic.—Louisiana*, 10 M. C. C. 525; *Texas & P. Motor Transport Co.—Purchase—Southern Transp.*, 5 M. C. C. 653; *Texas & P. Motor Transport Co. Ext.—Wills Point, Tex.*, 14 M. C. C. 645; *Texas & P. Motor Transport Co.—Purchase—Johnson*, 5 M. C.
925 C. 89; *Texas & P. Motor Transport Co. Ext.—Big Spring-Pecos, Tex.*, 14 M. C. C. 649. Applicant seeks to effect similar coordinated train-truck service between Marshall and Texarkana. By such service the movement of freight can be expedited, to the benefit of the receiving and shipping public along the route. At most of the stations to be served, joint station facilities are maintained by applicant and the Texas and Pacific, or by applicant and the Jefferson and Northwestern. Applicant's fitness and ability financial and otherwise, properly to conduct the proposed service is unquestioned.

Applicant proposes to interchange freight only with the Texas and Pacific and the Jefferson and Northwestern at points on the route. Joint rates are to be made effective. Five tractors and semitrailers will be used. Freight arriving at Marshall and Texarkana by rail will be transferred to trucks for early morning delivery to points on the proposed route. At the present time, carload and less-than-carload freight destined to points between Marshall and Texarkana is handled on a local freight train operating from Longview, Tex., to Texarkana on Monday, Wednesday, and Friday, and returning on Tuesday, Thursday, and Saturday of each week. By having trucks meet the daily scheduled freight trains coming into Texarkana from the north and those coming into Marshall from Louisiana points and from points west of Marshall, less-than-carload freight can be delivered to points on the proposed route with a saving of 12 to 24 hours in time. The local freight train will thus be relieved of approximately 12 cars daily, which are lightly loaded with less-than-carload freight, thereby permitting such train more expeditiously to handle the carload shipments through the elimination of considerable time-consuming switching service.

926 The proposed service will enable commercial establishments at points on the proposed route to satisfy the varied demands of customers and at the same time maintain their inventories at a minimum. The proposed operation will afford overnight service from the trading centers of Dallas, Fort Worth, and Houston, Texas, and Shreveport, La., and save from one to two days on freight from St. Louis, Mo., and points east thereof. The territory served is primarily agricultural, with some industrial activities. During recent years the discovery of oil in the territory has created additional traffic.

Only one other motor carrier serves all the points on the route. There is no showing, however, that the coordinated service proposed by applicant will compete with the service of that carrier to any extent. Applicant's primary purpose is to retain the traffic now moving over the Texas and Pacific into the territory by affording a faster and more frequent service through the proposed coordinated operations.

The joint board found that public convenience and necessity require the proposed service to the extent it is limited to that which is supplementary and auxiliary to, and coordinated with, rail service, and recommended that a certificate be issued subject to specific conditions in furtherance of that recommendation and to prevent duplication of, and competition with, existing highway service. One of these conditions is as follows:

(3) Shipments transported by applicant shall be limited to those which it receives from or delivers to the Texas & Pacific or Jefferson & Northwestern Railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

Applicant takes exception to the imposition of this condition. It asserts that points on the proposed route are within the Shreveport, La., trade territory; and that while it expects the bulk of the traffic from Shreveport to these points will move at night on a through train which
927 will set out a car at Marshall for delivery beyond by truck, it desires to move the traffic accumulated after departure of the train wholly by truck, in order to render efficient service to shippers and effect delivery the same day, and which the imposition of the condition referred to would prohibit. It also points out that where, as in the case of shipments handled by forwarding com-

panies, there is an interstate carload movement of freight destined to Marshall or Texarkana composed of goods destined to move in less-than-carload quantities to intermediate points on the proposed route, applicant would be prohibited from transporting such shipments to final destination due to the absence of a through bill of lading, even though there had been a prior movement by rail.

Applicant's argument goes merely to the question whether its service should be limited to that which is supplementary and auxiliary to, and coordinated with, rail service, or whether it should be permitted to engage in motor vehicle operations independently of rail service and in competition with such service as well as that of existing highway carriers. It appears that the primary object of the application is the furnishing of a service that will be supplementary and auxiliary to, and coordinated with, rail service. The evidence submitted is directed to a showing, and the record warrants the conclusion, that public convenience and necessity require the furnishing by applicant of such service over the route under consideration, but it does not establish any need for service by applicant which is not required in such coordinated operations. It follows that the certificate to be granted to applicant should be limited in keeping with the recommendation of the joint board. The conditions imposed, and the reasons therefor, are similar to those set out in *Kansas City S. Transport Co. Inc. Com. Car. Application*, 10 M. C. C. 221, and *Texas & P. Motor Transport Co. Com. Car. Applic.—Louisiana*, 10 M. C. C. 525.

928 We find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, except money, high explosives, corpses, and uncrated vegetables, between Marshall and Texarkana, Texas, over U. S. Highway 59 between Marshall and Linden, Texas, and Texas Highway 47 between Linden and Texarkana, Texas, serving all intermediate points which are stations on the rail lines of the Texas and Pacific and the Jefferson and Northwestern and all off-route points located on the rail line of the Texas and Pacific between Marshall and Texarkana, subject to the following conditions:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Rail-

way Company or the Jefferson & Northwestern Railroad, hereinafter called the railways.

2. Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railways.
3. Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.
4. All contractual arrangements between applicant and the railways shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.
5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to or supplemental of, rail service.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder; that a certificate authorizing such operation should be issued; and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application, except to the extent that operations are authorized herein.

929 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 20th day of November, A. D. 1939

No. MC-50544 (Sub-No. 4)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION
MARSHALL-TEXARKANA, TEX.

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That except to the extent a certificate is granted in said report, the application be, and it is hereby, denied, effective January 6, 1940.

By the Commission, division 5.

(SEAL)

W. P. BARTEL,
Secretary.

930 *Certificate* C-15

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 15th day of January, A. D. 1940.

No. MC 50544 Sub 4

APPLICATION OF THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

Investigation of the matters and things involved in this proceeding having been made, said Division having made and filed a report and order containing its findings of fact and conclusions thereon, which report and order are hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require operation by the said applicant, and it is hereby authorized to engage in interstate or foreign commerce, on and after January 15, 1940, as a common carrier by motor vehicle of the commodities indicated, over the regular route, between fixed termini, and to and from intermediate and off-route points, as specified below:

General commodities, except money, high explosives, corpses, and uncrated vegetables,

Between Marshall, Tex., and Texarkana, Tex.:

From Marshall over U. S. Highway 59 to Linden, Tex., thence over Texas Highway 47 to Texarkana, and return over the same route.

All intermediate points which are stations on the rail lines of The Texas and Pacific Railway Company or the Jefferson & Northwestern Railroad.

Off-route points located on the rail line of The Texas and Pacific Railway Company between Marshall and Texarkana.

Service herein authorized is subject to the following conditions.

The service to be performed by applicant shall be limited to service which is auxiliary to, or supple-

mental of, rail service of The Texas and Pacific Railway Company or the Jefferson & Northwestern Railroad, hereinafter called the railways.

Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railways.

Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

931 All contractual arrangements between applicant and the railways shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to or supplemental of, rail service.

It is ordered, That this certificate shall remain in force for such period as the said carrier shall continue to perform the services herein authorized, unless revoked in accordance with the provisions of the Motor Carrier Act, 1935.

It is further ordered, That operations pursuant to this certificate shall be subject to such terms, conditions, and limitations as have been, or may be hereafter, prescribed by the Commission.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

932 MF-I. C. C. No. 1

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

FREIGHT TARIFF No. 5

Showing
Local Interstate Distance Class Rates
On
LESS CARLOAD FREIGHT TRAFFIC
Applying
Between Points
On
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
Also
List of Stations and Table of Distances

Governed, except as otherwise provided herein, by Western Classification No. 65 Agent R. C. Fyfe's MF-I. C. C. No. 1, supplements thereto or successive issues thereof.

Rates named in this Tariff apply on Interstate Traffic only.

ISSUED MARCH 18, 1936 EFFECTIVE APRIL 1, 1936

Issued by
T. E. HUFFMAN.
General Freight Agent,
1025 Elm Street,
Dallas, Texas.

INTERSTATE
COMMERCE COMMISSION
RECEIVED
DEC 6 1937
SECTION OF CERTIFICATES & INS.

(200)

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ALPHABETICAL LIST OF POINTS FROM AND TO WHICH RATES APPLY

Station		Index No.
Abington	La.	24
Armistead	La.	34
Caspiana	La.	14
Cecile	La.	10
Cheyenne	Tex.	208
Cypress	La.	54
Emmett Spur	La.	28
Eunice	N.M.	214
Gahagan	La.	32
Gayles	La.	8
Glen	La.	70
Gloster	La.	62
Grand Bayou	La.	26
Grand Cane	La.	64
Hanna	La.	38
Harmon	La.	30
Hobbs	N.M.	218
Hollingsworth	La.	36
Howard	La.	18
Hyams	La.	48
Jal	N.M.	210
Keithville	La.	58
Kermit	Tex.	206
Kimbrough	N.M.	220
Kornegay	N.M.	216
Lachute	La.	16
Lake End	La.	40
Little Cloger	La.	78
Lovington	N.M.	222
Lucas	La.	4
Mansfield Jct.	La.	68
Marthaville	La.	80
Monahans	Tex.	200
Moss Spur	La.	12
Natchez	La.	52
Natchitoches	La.	50
Oxford	La.	72
Pelican	La.	74
Pleasant Hill	La.	76
Pog	Tex.	202
Powhatan	La.	44
Provencal	La.	86
Reisor	La.	56
Robeline	La.	84
Robson	La.	6
Shamrock Mill	La.	82
Shreveport	La.	2
Socot	La.	46
South Mansfield	La.	6
Stonewall	La.	60
Teague	N.M.	212
Timon's Spur	La.	42
Weaver Spur	La.	88
Westdale	La.	22
Williams	La.	20
Wink	Tex.	204

934 GEOGRAPHICAL LIST OF POINTS IN LOUISIANA FROM AND TO WHICH RATES APPLY, ALSO DISTANCES APPLICABLE

For rates to apply between the following points, see Item No. 200

Index No.	*Miles Between* ⟶ *and*	*Shreveport La.*	*Cypress, La.*
2	Shreveport	...	86.0
4	*Lucas	13.9	72.1
6	*Robson	17.5	68.5
8	Gayles	19.3	66.7
10	*Cecile	22.0	64.0
12	*Moss Spur	22.6	63.4
14	Caspiana	25.0	61.0
16	*Lachute	27.5	58.5
18	Howard	31.0	55.0
20	*Williams	33.3	52.7
22	Westdale	35.3	50.7
24	*Abington	39.0	47.0
26	*Grand Bayou	41.0	45.0
28	*Emmett Spur	42.8	43.2
30	Harmon	43.8	42.2
32	*Gahagan	45.9	40.1
34	*Armistead	49.0	37.1
36	*Hollingsworth	51.0	35.0
38	Hanna	52.5	33.5
40	Lake End	56.2	29.8
42	*Timon's Spur	60.4	25.6
44	Powhatan	63.2	22.8
46	*Socot	67.2	18.8
48	*Hyams	68.6	17.4
50	Natchitoches	74.4	11.6
52	Natchez	81.2	4.8
54	Cypress	86.0	...
56	*Reisor	9.9	81.6
58	Keithville	15.1	76.5
60	*Stonewall	18.6	73.0
62	*Gloster	25.1	66.5
64	Grand Cane	33.0	58.6
66	South Mansfield	39.6	51.5
68	*Mansfield Jct.	40.2	50.9
70	*Glen	45.3	45.8
72	Oxford	48.0	43.1
74	Pelican	52.1	39.0
76	Pleasant Hill	58.2	32.9
78	*Little Clover	58.8	32.3
80	Marthaville	67.7	23.4
82	*Shamrock Mill	72.2	18.9
84	Robeline	74.0	17.1
86	Provencal	80.8	10.3
88	*Weaver Spur	87.4	3.7

*No Agent. Freight Charges must be prepaid. C. O. D. shipments will not be accepted when destined to stations referring hereto.

GEOGRAPHICAL LIST OF POINTS IN TEXAS AND NEW MEXICO FROM AND TO WHICH RATES APPLY, ALSO DISTANCES APPLICABLE
For rates to apply between the following points, see Item No. 210

Index No.	*Miles Between — and*		*Monahans, Tex.*	*Lovington, N.M.*	*Wink, Tex.*
200	Monahans	Tex.	....	106.5	20.5
202	#Pog	Tex.	15.5	91.0	5.0
204	Wink	Tex.	20.5	91.5	....
206	Kermit	Tex.	24.7	81.8	9.7
208	Cheyenne	Tex.	33.4	73.1	18.4
210	Jal	N.M.	43.4	63.1	28.4
212	#Teague	N.M.	55.9	50.6	40.9
214	Eunice	N.M.	66.9	39.6	52.0
216	#Kornegay	N.M.	77.5	29.0	62.5
218	Hobbs	N.M.	85.3	21.2	70.4
220	#Kimbrough	N.M.	95.1	11.4	80.1
222	Lovington	N.M.	106.5	....	91.5

No Agent. Freight charges must be prepaid. C. O. D. shipments will not be accepted when destined to stations referring hereto. No pick up or delivery service performed.

935 —EXCEPTIONS TO WESTERN CLASSIFICATION—

Item No. 10 ADVANCING CHARGES

No charges of any description will be advanced to shippers, owners, consignees or agents thereof, nor to their draymen or warehousemen; except charges which are incidental to the transportation of the shipment, including drayage or switching charges published in tariffs lawfully on file with the Interstate Commerce Commission, and charges not on file with said Commission for drayage or trucking within corporate or switching limits of the shipping station.

No drayage or trucking charges which are not lawfully on file with the Interstate Commerce Commission or State Commissions will be advanced unless the payment thereof is guaranteed in writing by the consignor.

No charges will be advanced on any shipment which in the judgment of the carrier's agent at point of shipment would not at forced sale realize the total amount of charges due at destination.

Item No. 20 FREIGHT EXEMPT FROM MARKING

A shipment that fully occupies the visible capacity of a truck, or that in the aggregrate weighs 6000 pounds or more, or if weighing less than 6,000 pounds is declared by shipper as weighing 6,000 pounds, and so charged for by the carrier, when shipped from one station in or on one truck, in one day, by one shipper for delivery to one consignee at one destination need not be marked. (Exception to Paragraph (b), Section 2 of Rule 6 of current Western Classification.)

—General Application of Rates—

Item No. 30 Application of Western Classification

Unless otherwise specifically provided in this Tariff, all property transported by this carrier shall be subject to the ratings, rules and regulations provided in the current Western Classification applicable on less than carload traffic (see Exception). When articles are classified both carload and less than carload in the current Western Classification, it should be understood that only the less than carload rating will apply.

Exception: Unless otherwise specifically provided in this Tariff, Rules, 3, 8, 10, 14, 15, 24, 27, 29, 30, 31, 32, 33, 34, 35, 37, 38, 43 and 44 of current Western Classification will not apply.

Item No. 40 Reception and Delivery of Freight

Except as otherwise provided herein, freight will be received and/or delivered at freight depots or stations of this carrier.

Item No. 50 Pick-up and Delivery Service

Within limits provided in this tariff, freight will be picked up at or delivered to store door at this carrier's expense, during regular business hours the condition of the roads and streets permitting. (See Notes)

Note A—Where the term "store door" is used in this tariff, it shall be understood to include warehouses, docks or sidewalk doors directly accessible to trucks.

Note B—The terms "pick-up" and "delivery" as referred to in this tariff refer to the service involved in calling for and collecting freight and receipting therefor at points of origin and making delivery at points of destination.

Note C—If shipments are tendered for store door delivery which cannot be accomplished through no fault of this carrier, no further effort will be made to effect such delivery nor assume any expense involved for drayage from its facilities.

Note D—Nothing in this tariff shall require the carrier to Pick-Up or Deliver freight at locations at which, on account of condition of highways or streets, it is impracticable to operate trucks or drays.

936 —General Application of Rates—

Item No. 60 Pick-up and/or Delivery Limits

Except as otherwise specifically provided herein, pick-up and/or delivery service will be confined to the corporate

limits of incorporated cities or towns of the origin or destination stations. (See Exceptions)

At any unincorporated town or station the pick-up and/or delivery service, except as otherwise specifically provided herein, will be confined to locations within a radius of one mile (computed by the shortest route over public street or highway available to drays or trucks) of this carrier's freight station. (See Exceptions)

Exception A—Shreveport, La.—Rates applicable to and from Shreveport, La. include pick-up and delivery service at

Barksdale Field, La.
Bossier City, La.
Long Bell Lumber Sales Co.
Lincoln Tank Company
Texas Company (Tank Farm)

Exception B—Jal, N. M.—Rates applicable to and from Jal, N. M. include pick-up and delivery service at El Paso Natural Gas. Co. and Phillips Petroleum Co.

Exception C—Kermit, Tex.—Rates applicable to and from Kermit, Tex. include pick-up and delivery service at Magnolia Petroleum Co.

Exception D—Wink, Tex.—Rates applicable to and from Wink, Tex. include pick-up and delivery service at

Community Public Service Co.
General Crued Oil Co
Lion Oil Refining Co.
Magnolia Petroleum Co.
Shell Petroleum Co.
Shell Pipe Line Co.
Sinclair Prairie Oil and Gas Co.
Skelly Oil Co.
Texas Company

Exception E—Hobbs, N. M.—Rates applicable to and from Hobbs, N. M. include pick-up and delivery service at

Amerada Petroleum Corp.
Alantic Oil Production Dept.
Atlantic Pipe Line Co.
California Company (The)
Cities Service Oil Co.
Continental Oil Co. (Prod. Dept.)
Empire Gas and Fuel Co.
Getty Oil Co.
Gypsy Oil Co.
Humble Oil Refining Co.
Humble Pipe Line Co.
Landreth Production Co.
Ohio Oil Co.
Phillips Petroleum Co.
Repollos Oil Co.
Shell Gasoline Plant
Shell Petroleum Corp. (Prod. Dept.)
Shell Pipe Line Co.
Stanolind Oil & Gas Co.
Texas Company (Prod. Dept.)
Texas Pacific Coal & Oil Co.
Tidewater Oil Co.

Exception F—Eunice, N. M.—Rates applicable to and from Eunice, N. M. will include pick-up and delivery service at locations within radius of two (2) miles of the freight station at Eunice, N. M.

937 —General Application of Rates—

Allowance to Consignor or Consignee in Lieu of Item No. 70 Pick-up and/or Delivery Service

When the consignor elects to deliver the freight to this carrier's freight depot or station, an allowance of 5 cents per 100 pounds will be made to said consignor for such service, subject to the conditions and exceptions provided herein.

When the consignee elects to accept delivery of his freight at this carrier's freight depot or station, an allowance of 5 cents per 100 pounds will be made to said consignee, subject to the conditions and exceptions provided herein.

Said allowances will be computed on basis of the weight on which the freight charges are assessed, on each shipment, except that a minimum allowance of 5 cents per shipment will be made where the freight charges are based on weight less than 100 pounds, or when the minimum charge of 50 cents is applied under Rule 13 of the current Western Classification.

The allowances will be made directly to the consignor or the consignee and only when the service is performed by the consignor or consignee and not by public drayage concern or contracting drayman.

No allowance will be made on any shipment which has been tendered for delivery and returned to the carrier's depot.

Allowances due the consignor or consignee may be made on statement prepared by the carrier or upon claims filed by consignor or consignee with carrier's agent at point of origin or destination, such claim to be supported by itemized statement of shipments involved.

No allowance will be made on shipments not entitled to free pick-up and/or delivery service as provided in this tariff.

Item No. 80 Articles on Which This Tariff Does Not Apply

Unless otherwise specifically provided, this tariff does not apply on the following articles, when shipped separately or as premiums accompanying other articles:

Any article liable to impregnate other freight.
Automobiles.
Bank Bills, Coin or Currency.
Corpse.
Cotton.
Cotton Linters or Regins.
Cotton Seed Hull Fibre or Shavings.
Deeds, Drafts, Notes or Valuable Papers of any kind.
Dynamite or other High Explosives.
Fish and Oysters, fresh.
Fresh Meat.
Jewelry.
Live Animals, Not Otherwise Indexed by Name in Current Western Classification.
Live Stock, Pets and Animals.
Live Wild Animals and Ostriches.
Other Articles of Extraordinary Value.
Postage Stamps or Letters or Packages of Letters with or without Postage Stamps affixed.
Precious Metals or Articles manufactured therefrom.
Precious Stones.
Revenue Stamps.

938 —Rules and Regulations—

Item No. 90 Heavy or Bulky Articles

When this carrier does not have available suitable equipment for handling, it may refuse to pick up and/or deliver at warehouse, docks, or sidewalk doors, the following articles:

(a) Weighing in excess of 4,000 pounds;
(b) Of dimensions exceeding 14 feet in length, 6 feet in width and/or 6 feet in height;
(c) In excess of 20 feet in length.

Item No. 100 Articles Weighing 500 Pounds or Over

The pick-up or delivery service does not apply on articles weighing 500 pounds or over in one piece or package where the loading or unloading platform of the consignor or consignee (as the case may be) is not suitably elevated unless the consignor or consignee (as the case may be) cooperates by furnishing a loading or unloading crane and/or other assistance in the loading or unloading of such articles at their place of business.

Item No. 110 PREMIUMS

Articles, with premiums in same shipping container, less than carloads, will be charged at 110 per cent of the rate provided for same articles packed in the same manner as without premiums. Shippers will be required to so state on shipping tickets when packages contain premium. (See Note)

NOTE—The basis provided in this item will apply either when the premiums are included in the package containing articles of which the shipment consists, or when premiums are packed separately in the same shipping container with such articles, but will not apply when the articles of which the shipment consists, and the premiums, are in separate shipping containers.

Item No. 120 ACCEPTANCE OF C. O. D. SHIPMENTS

Shipments destined to agency stations at which delivery is applicable under the provisions of this tariff may be consigned C. O. D., subject to the additional charges provided in Item No. 130 for such C. O. D. service.

"C. O. D." means "Collect on Delivery"; that is to say, Collecting from consignee and remitting to shipper the amount of the invoice covering the shipment.

The letters "C. O. D.", also the amount to be collected and the name and address of the shipper must be plainly marked on each package with which a bill is sent to be collected on delivery, and similar entry must be made on the Bill of Lading or shipping order.

Consignor's invoice or collection papers enclosed in return envelope properly filled in must be securely attached to the shipping order copy of Bill of Lading.

When two or more packages are sent by one consignor to the same consignee at the same time, with separate C. O. D.'s, or when one of the packages is C. O. D. and the other or others are not, such packages bearing separate C. O. D.'s must be waybilled as individual shipments and charges assessed accordingly.

C. O. D. shipments will not be accepted with the privilege of examination or trial, or bearing instructions to make partial delivery.

The amount of C. O. D. bills for C. O. D. shipments will be collected at the time such shipments are delivered to the consignee.

C. O. D. shipments will not be accepted or receipted for

when billed to one firm or person with instructions to collect charges from another firm or person.

The charge for collecting and remitting the amount of bills for C. O. D. shipments will be collected from the consignee unless the consignor instructs otherwise. When the consignee is to pay the charge for collecting and remitting the amount of the C. O. D., and offers a check or draft payable to the consignor for the amount of the C. O. D., the charge for collecting and remitting must not be included in the check or draft made payable to the consignor.

Unless authority has been received from the consignor in writing, checks or drafts made payable to the consignor will not be accepted in payment of C. O. D. charges.

The provisions of this item do not apply on any spiritous, vinous, malted, fermented or other intoxicating liquors of any kind.

939 —Rules and Regulations—

Item No. 130 Additional Charge for C. O. D. Shipments

The charges of this carrier for collecting and remitting the amount of C. O. D. bills collected on shipments consigned C. O. D., as provided in Item 120, or in other tariffs lawfully on file with the Interstate Commerce Commission, will be as follows:

When the Amount Collected is	*Charge for Collecting and Remitting Will Be*
Not over $2.50	$0.18
Over $ 2.50 not over $ 5.00	.20
Over 5.00 not over 10.00	.28
Over 10.00 not over 20.00	.30
Over 20.00 not over 25.00	.32
Over 25.00 not over 40.00	.37
Over 40.00 not over 50.00	.40
Over 50.00 not over 60.00	.50
Over 60.00 not over 75.00	.52
Over 75.00 not over 80.00	.52
Over 80.00 not over 100.00	.54
Over 100.00 not over 102.50	.68
Over 102.50 not over 105.00	.70
Over 105.00 not over 110.00	.73
Over 110.00 not over 120.00	.75
Over 120.00 not over 140.00	.77
Over 140.00 not over 150.00	.80
Over 150.00 not over 160.00	.85
Over 160.00 not over 180.00	.87
Over 180.00 not over 200.00	.89
Over 200.00 not over 250.00	1.00
Over 250.00 not over 300.00	1.15
Over 300.00 not over 350.00	1.30

When the Amount Collected is			*Charge for Collecting and Remitting Will Be*
Over	350.00 not over	400.00	1.45
Over	400.00 not over	450.00	1.60
Over	450.00 not over	500.00	1.75
Over	500.00 not over	550.00	1.90
Over	550.00 not over	600.00	2.05
Over	600.00 not over	650.00	2.20
Over	650.00 not over	700.00	2.35
Over	700.00 not over	750.00	2.50
Over	750.00 not over	800.00	2.65
Over	800.00 not over	850.00	2.80
Over	850.00 not over	900.00	2.95
Over	900.00 not over	950.00	3.10
Over	950.00 not over	1,000.00	3.25
Over 1,000.00 at rate of $3.25 per $1,000.00			

Item No. 140 REFUSED OR UNCLAIMED FREIGHT

1. When shipments have been plainly marked with the consignor's name and address, preceded by the word "from", notice shall be immediately sent or given consignor of refusal of less-than-carload shipments. Unclaimed less-than-carload shipments will be treated as refused after fifteen calendar days from expiration of free time.

2. Notice shall be sent or given the consignor of unclaimed or refused shipments of explosives or other dangerous articles on hand forty-eight hours, provided written request is received for this information by Agent at point of origin at time of shipment. Such requests should be plainly written on a rectangular piece of paper of different color from any label required under the Interstate Commerce Commission's regulations and placed on the package in close proximity to such label (as to name of consignee).

3. Where consignor requests that notice of unclaimed or refused shipments be sent by telegraph, this may only be done at his expense.

Item No. 150 STORAGE CHARGES AND RULES GOVERNING

(A) 96 hours (four days) free time (see Exception) will be allowed on all commodities for removal of inbound freight from carrier's premises EXCEPT shipments consigned to parties located at interior or at non-railroad points 10 miles or more from railroad stations, the following allowance of free time will be made:

When hauled 10 miles and not over 20 miles from station	5 days
When hauled over 20 miles and not over 30 miles from station	10 days
When hauled over 30 miles from station	15 days

(B) In computing time any fractional part of 100 pounds will be computed as 100 pounds and any fractional part of 24 hours will be computed as one day.

(Concluded on following page)

940 Supplement No. 1 to
MF-I. C. C. No. 1
(Supplement No. 1 contains all changes)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

SUPPLEMENT No. 1
to
FREIGHT TARIFF No. 5
(Supplement No. 1 contains all changes)
Showing
Local Interstate Distance Class Rates
on
LESS CARLOAD FREIGHT TRAFFIC
Applying
Between Points
on
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
Also
List of Stations and Table of Distances

Governed, except as otherwise provided herein, by Western Classification No. 66, Agent R. C. Eyfe's MF-I. C. C. No. 2, supplements thereto or successive issues thereof.

Rates named herein apply on Interstate Traffic only

ISSUED JUNE 11, 1937 EFFECTIVE JULY 14, 1937

Issued by
T. E. HUFFMAN,
General Freight Agent
1025 Elm Street,
Dallas, Tex.

941

ALPHABETICAL LIST OF POINTS FROM AND TO WHICH RATES APPLY
Refer to Page 2 of Tariff and add the following:

STATION	Index No.	STATION	Index No.
Abilene, Tex.	372	Iona, Tex.	328
Aledo, Tex.	330	Ives, Tex.	386
Anneta, Tex.	332	Jamestown, Tex.	322
Arlington, Tex.	318	June Spur, Tex.	312
Baird, Tex.	366	Lambert, Tex.	336
Benbrook, Tex.	326	Lefn, Tex.	356
Big Spring, Tex.	402	Loraine, Tex.	392
Breckenridge, Tex.	374	Marston, Tex.	344
Chautauqua, Tex.	364	Merkel, Tex.	380
Cisco, Tex.	358	Millsap, Tex.	338
Clowdy, Tex.	310	Mineral Wells, Tex.	340
Clyde, Tex.	368	Olden, Tex.	352
Coahoma, Tex.	400	Oriental, Tex.	304
Colorado, Tex.	394	Parks, Tex.	376
Dallas, Tex.	300	Putnam, Tex.	362
Dothan, Tex.	360	Ranger, Tex.	350
Eagle Ford, Tex.	308	Roscoe, Tex.	390
Eastland, Tex.	354	Strawn, Tex.	342
Elmdale, Tex.	370	Sweetwater, Tex.	388
Eskota, Tex.	384	Tiffin, Tex.	348
Fort Worth, Tex.	324	Trent, Tex.	382
Gates, Tex.	306	Tye, Tex.	378
Grand Prairie, Tex.	314	Weatherford, Tex.	334
Handley, Tex.	320	Westbrook, Tex.	396
Harrys, Tex.	302	Wiles, Tex.	346
Iatan, Tex.	398		

Refer to Page 3 of Tariff and add the following:

GEOGRAPHICAL LIST OF POINTS IN TEXAS FROM AND TO WHICH RATES APPLY, ALSO DISTANCES APPLICABLE

For rates to apply between the following points, see Item No. 200-A.

Index No.	MILES BETWEEN AND	Abilene	Big Spring	Dallas	Ft. Worth
300	DALLAS	192.1	298.8	....	31.7
302	Harrys	188.8	295.5	3.3	28.4
304	#Oriental	188.1	294.8	4.0	27.7
306	Gates	187.5	294.3	4.6	27.1
308	Eagle Ford	186.3	293.0	5.8	25.9
310	#Clowdy	184.5	291.2	7.6	24.1
312	#June Spur	183.4	290.1	8.7	23.0
314	Grand Prairie	180.1	286.8	12.0	19.7
318	Arlington	173.8	280.5	18.3	13.4
320	Handley	167.2	273.9	24.9	6.8
322	#Jamestown	162.9	269.6	29.2	2.5
324	Ft. Worth	160.4	267.1	31.7	....
326	#Benbrook	151.9	258.6	40.2	8.5
328	#Iona	145.8	252.5	46.3	14.6
330	Aledo	142.6	249.3	49.5	17.8
332	#Annetan	137.2	244.5	54.3	22.6
334	Weatherford	129.8	236.5	62.3	30.6
336	#Lambert	123.3	230.0	68.8	37.1
338	Millsap	115.8	222.5	76.3	44.6
340	Mineral Wells	151.7	258.4	84.2	52.5
342	Strawn	80.2	186.9	111.9	80.2
344	#Marston	78.0	184.7	114.1	82.4

Index No.	Miles Between And	Abilene	Big Spring	Dallas	Ft. Worth
346	#Wiles	72.9	179.6	119.2	87.5
348	#Tiffin	68.4	175.1	123.7	92.0
350	Ranger	65.8	172.5	126.3	94.6
352	Olden	59.4	166.1	132.7	101.0
354	Eastland	55.8	162.5	136.3	104.6
356	#Lem	51.2	157.9	140.9	109.2
358	Cisco	45.9	152.6	146.2	114.5
360	#Dothan	38.7	145.4	153.4	121.7
362	Putnam	32.7	139.4	159.4	127.7
364	#Chautauqua	26.2	132.9	165.9	134.2
366	Baird	20.8	127.5	171.3	139.6
368	Clyde	14.5	121.2	177.6	145.9
370	#Elmdale	5.7	112.4	186.4	154.7
372	Abilene	....	106.7	192.1	160.4
374	Breckenridge	74.1	180.8	154.3	122.6
376	Parks	67.3	174.0	161.1	129.4
378	Tye	7.9	98.8	200.0	168.3
380	Merkel	16.3	90.4	208.4	176.7
382	Trent	22.8	83.9	214.9	183.2
384	#Eskota	31.2	75.5	223.3	191.6
386	#Ives	34.8	71.9	226.9	195.2
388	Sweetwater	41.3	65.4	233.4	201.7
390	Roscoe	49.2	57.5	241.3	209.6
392	Loraine	60.0	46.7	252.1	220.4
394	Colorado	69.2	37.5	261.3	229.6
396	Westbrook	78.6	28.1	270.7	239.0
398	Iatan	85.4	21.3	277.5	245.8
400	Coahoma	96.3	10.4	288.4	256.7
402	Big Spring	106.7	....	298.8	267.1

Rates

Item No. 200-A (Cancels Item No. 200)

The following rates apply on Interstate Traffic only as follows, subject to the rules and conditions named in tariff:

Between points in Louisiana shown on Page 3 of Tariff bearing Index Nos. 2 to 88, inclusive.

Between points in Texas shown on Page 2 hereof bearing Index Nos. 300 to 402, inclusive.

Rates in Cents Per 100 Pounds

Distances (Miles)	Classes 1	2	3	4
5 and under	36	31	25	20
10 and over 5	38	32	27	21
15 and over 10	41	35	29	23
20 and over 15	43	37	30	24
25 and over 20	46	39	32	25
30 and over 25	♦49	♦42	34	♦27
35 and over 30	51	43	36	28
40 and over 35	♦54	♦46	♦38	♦30
45 and over 40	56	48	39	31
50 and over 45	♦59	♦50	41	32
55 and over 50	♦62	♦53	43	34
60 and over 55	♦64	54	♦45	35
65 and over 60	♦67	♦57	♦47	♦37
70 and over 65	♦69	♦59	48	♦38
75 and over 70	♦72	♦61	♦50	♦40
80 and over 75	♦74	♦63	♦52	♦41
85 and over 80	♦76	♦65	♦53	♦42
90 and over 85	♦78	♦66	♦55	♦43
95 and over 90	80	68	56	44
100 and over 95	82	70	57	45

(Concluded on following page)

No agent. Freight charges must be prepaid. C. O. D. shipments will not be accepted when destined to stations referring hereto. No pick up or delivery service performed.

♦ Denotes reduction.

◆ Denotes advance.

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Page 2. Sup. 2 to T.&P. Motor Transport Tariff No. 5.

ALPHABETICAL LIST OF POINTS FROM AND TO WHICH RATES APPLY

Refer to Page 2 of Sup. No. 1 and eliminate the following:

STATION	*Index No.*	STATION	*Index No.*
Aledo, Tex.	330	June Spur, Tex.	312
Anneta, Tex.	332	Lambert, Tex.	336
Denbrook, Tex.	326	Lem, Tex.	356
Eskota, Tex.	384	Marston, Tex.	344
Iona, Tex.	328	Tiffin, Tex.	348
Ives, Tex.	386	Wiles, Tex.	346

GEOGRAPHICAL LIST OF POINTS IN TEXAS FROM AND TO WHICH RATES APPLY, ALSO DISTANCES APPLICABLE

For rates to apply between the following points, see Item No. 200-A.

▲ Refer to Page 2 of Sup. No. 1 and make the following changes:

No. Index	AND MILES BETWEEN	*Abilene*	*Spring Big*	*Dallas*	*Ft. Worth*
312	June Spur				
326	Benbrook				
328	Iona				
330	Aledo				
332	Annetan				
336	Lambert	Eliminate stations not located on this line.			
344	Marston				
346	Wiles				
348	Tiffin				
356	Lem				
384	Eskota				
386	Ives				

▲ Denotes change other than advance or reduction.

FINIS.

943

Supplement No. 2 to
MF-I. C. C. No. 1
(Supplements Nos. 1 and 2 contain all changes)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

SUPPLEMENT No. 2
to
FREIGHT TARIFF No. 5
(Supplements Nos. 1 and 2 contain all changes)
Showing
Local Interstate Distance Class Rates
on
LESS CARLOAD FREIGHT TRAFFIC
Applying
Between Points
on
THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
Also
List of Stations and Table of Distances

Governed, except as otherwise provided herein, by Western Classification No. 66, Agent R. C. Fyfe's MF-I. C. C. No. 2, supplements thereto or successive issues thereof.

Rates named herein apply on Interstate Traffic only

ISSUED JULY 23, 1937. EFFECTIVE AUGUST 25, 1937.

Issued by
T. E. HUFFMAN,
General Freight Agent
1025 Elm Street,
Dallas, Tex.

944

Sup. 1 to T.&P. Motor Transport Tariff No. 5.

RATES

Item No. 200-A (Cancels Item No. 200)—Concluded.

The following rates apply on Interstate Traffic only as follows, subject to the rules and conditions named in tariff:

BETWEEN points in LOUISIANA shown on Page 3 of Tariff bearing Index Nos. 2 to 88, inclusive.

BETWEEN points in TEXAS shown on Page 2 hereof bearing Index Nos. 300 to 402, inclusive.

RATES IN CENTS PER 100 POUNDS

Distances (Miles)	Classes 1	2	3	4
110 and over 100	85	72	60	47
120 and over 110	88	75	62	48
130 and over 120	91	77	64	50
140 and over 130	94	80	66	52
150 and over 140	97	82	68	53
160 and over 150	100	85	70	55
170 and over 160	103	88	72	57
180 and over 170	106	90	74	58
190 and over 180	109	93	76	60
200 and over 190	112	95	78	62
210 and over 200	114	97	80	63
220 and over 210	116	99	81	64
230 and over 220	118	100	83	65
240 and over 230	121	103	85	67
260 and over 240	125	106	88	69
280 and over 260	130	111	91	72
300 and over 280	134	114	94	74
320 and over 300	139	118	97	76
340 and over 320	143	122	100	79
360 and over 340	148	126	104	81
380 and over 360	152	129	106	84
400 and over 380	156	133	109	86
420 and over 400	161	137	113	89
440 and over 420	166	141	116	91
460 and over 440	170	145	119	94
480 and over 460	174	148	122	96
500 and over 480	178	151	125	98
520 and over 500	183	156	128	101
540 and over 520	187	159	131	103
560 and over 540	192	163	134	106
580 and over 560	196	167	137	108
600 and over 580	200	170	140	110
620 and over 600	205	174	144	113
640 and over 620	209	178	146	115
660 and over 640	213	181	149	117
680 and over 660	218	185	153	120
700 and over 680	222	189	155	122

Item No. 210-A (Cancels No. 210)

The following rates apply on Interstate Traffic only between points in TEXAS and NEW MEXICO shown on Page 3 of Tariff bearing Index Nos. 200 to 222, inclusive, subject to the rules and conditions named in tariff.

RATES IN CENTS PER 100 POUNDS

Distances (Miles)	Classes 1	2	3	4
5 and under	♦38	♦32	♦27	♦21
10 and over 5	♦41	♦35	♦29	♦23
15 and over 10	♦44	♦37	♦31	♦24
20 and over 15	♦47	♦40	♦33	♦26
25 and over 20	♦50	♦43	♦35	♦28
30 and over 25	♦53	♦45	♦37	♦29
35 and over 30	♦56	♦48	♦39	♦31
40 and over 35	♦59	♦50	♦41	♦32
45 and over 40	♦62	♦53	♦43	♦34
50 and over 45	♦65	♦55	♦46	♦36
55 and over 50	♦68	♦58	♦48	♦37
60 and over 55	♦71	♦60	50	♦39

Distances (Miles)	Classes 1	2	3	4
65 and over 60	↓74	↓65	↓52	↓41
70 and over 65	↓77	↓65	↓54	↓42
75 and over 70	↓80	↓68	↓56	↓44
80 and over 75	83	71	58	46
85 and over 80	◆86	◆73	60	47
90 and over 85	◆89	◆76	◆62	◆49
95 and over 90	◆92	◆78	◆64	◆51
100 and over 95	◆94	◆80	◆66	◆52
110 and over 100	◆98	◆83	◆69	◆54

↓ Denotes reduction.
◆ Denotes advance.

945 RULES AND REGULATIONS

STORAGE CHARGES AND RULES GOVERNING—Concluded

Item No. 150—Concluded

(C) In computing time, Sunday and legal holidays (National, State and Municipal), but not half-holidays, will be excluded. When a legal holiday falls on Sunday, the following Monday will be excluded.

(D) On inbound freight held for removal or reshipment, time will be computed from the first 7:00 AM after the day on which notice of arrival is sent our given to consignee.

(E) On outbound freight, time will be computed from the first 7:00 AM after receipt in or on carrier's premises.

(F) Freight held in, or on carrier's premises in excess of free time allowed, will be subject to the following storage charges per day, or at option of carrier may be sent to Public Warehouse:

For each of the first five days ..1½ cents per 100 pounds
For the 6th and each succeeding day .....3 cents per 100 pounds

Minimum storage charges for shipment, on freight held beyond free time, five (5) days or part thereof, 25 cents; six (6) days or more, 50 cents.

EXCEPTION—C. O. D. shipments and Shippers Order Notify shipments shall not be subject to storage charges until after two hundred and forty hours (10 days) after written notice sent or given consignee.

TOLLS ON MESSAGES

Item No. 160

Tolls on messages by Telegraph, Telephone, Cable or Radio, signed by shippers, consignees or their agents or representatives relative to routing in connection with shipments of freight will not be assumed by the carriers parties to this Tariff.

Explosives and Other Dangerous Articles

Item No. 165

For rules and regulations governing the transportation of explosives and other dangerous articles by freight, also specifications for shipper's containers and restrictions governing the acceptance and transportation of explosives and other dangerous articles, see W. S. Topping's Freight Tariff No. 2, MF-I. C. C. No. 1.

Reference to Other Items or Other Publications

Item No. 170

(a) Reference herein to other publications includes reference to supplements thereto and successive issues thereof.

(b) Reference herein to Items or Pages in this or other publications includes reference to successive issues of such Items or Pages in such publications and in supplements thereto and successive issues thereof and the numbers of such Items or Pages are also inclusive.

Explanation of the Term "Current Western Classification"

Item No. 180

Reference herein to the "current Western Classification" means "Western Classification" No. 65, Agent R. C. Fyfe's MF-I. C. C. No. 1.

946

Rates

Item No. 200

The following rates apply on Interstate Traffic only between points in Louisiana shown on Page 3, bearing Index Nos. 2 to 88, inclusive, subject to the rules and conditions named in this tariff.

Rates in Cents Per 100 Pounds

Distances (Miles)	*Classes*			
	1	*2*	*3*	*4*
5 and under	36	31	25	20
10 and over 5	38	32	27	21
15 and over 10	41	35	29	23
20 and over 15	43	37	30	24
25 and over 20	46	39	32	25
30 and over 25	48	41	34	26
35 and over 30	51	43	36	28
40 and over 35	53	45	37	29
45 and over 40	56	48	39	31
50 and over 45	58	49	41	32
55 and over 50	61	52	43	34
60 and over 55	63	54	44	35
65 and over 60	66	56	46	36
70 and over 65	68	58	48	37
75 and over 70	70	60	49	39
80 and over 75	72	61	50	40
85 and over 80	74	63	52	41
90 and over 85	75	64	53	41

RATES

Item No. 210

The following rates apply on Interstate Traffic only between points in TEXAS and NEW MEXICO shown on Page 3, bearing Index Nos. 200 to 222, inclusive, subject to the rules and conditions named in this tariff.

RATES IN CENTS PER 100 POUNDS

Distances (Miles)	*Classes* 1	2	3	4
5 and under	41	35	29	23
10 and over 5	44	37	31	24
15 and over 10	47	40	33	26
20 and over 15	49	42	34	27
25 and over 20	53	45	37	29
30 and over 25	55	47	39	30
35 and over 30	59	50	41	32
40 and over 35	61	52	43	34
45 and over 40	64	54	45	35
50 and over 45	67	57	47	37
55 and over 50	70	60	49	39
60 and over 55	72	61	50	40
65 and over 60	76	65	53	42
70 and over 65	78	66	55	43
75 and over 70	81	69	57	45
80 and over 75	83	71	58	46
85 and over 80	85	72	60	47
90 and over 85	86	73	60	47
95 and over 90	89	76	62	49
100 and over 95	91	77	64	50
110 and over 100	95	81	67	52

FINIS

947 *Order* C-1

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 15th day of March, A. D. 1938

No. MC 60906

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

After due investigation:

It appearing, That applicant in accordance with the requirements of Section 206, Motor Carrier Act, 1935, including due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order, and that the said applicant or predecessor in interest was in *bona fide* operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission there-

under, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order.

It is further ordered, That in all respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order*, then said applicant shall show cause, if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

And it is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission. Otherwise such protests shall be denied.

By the Commission, division 5.

W. P. BARTEL
Secretary

(Seal)

947-A Appendix to the order of the INTERSTATE COMMERCE COMMISSION, Division 5, dated the 15th day of March, A. D. 1938 C-1

No. MC 60906

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or

foreign commerce as a common carrier by motor vehicle of the commodities indicated, over regular routes, between fixed termini, and to and from intermediate points, is as specified below:

Commodities generally, except those of unusual value, and except high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Dallas, Tex., and Abilene, Tex., as follows:

From Dallas over U. S. Highway 80 to Metcalfe Gap, Tex., thence over U. S. Highway 80A to Abilene; also

From Dallas over U. S. Highway 80 to Abilene.

Return over these routes to Dallas.

All intermediate points except Albany, Metcalfe Gap, Palo Pinto, Caddo, and Brad.

949 *Order* C-2

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 27th day of April, A. D. 1938

No. MC 60906

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

After due investigation:

It appearing, That applicant in accordance with the requirements of Section 206, Motor Carrier Act, 1935, including due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification set forth as appended on the *reverse side hereof or attached hereto*, and made a part of this order, and that the said applicant or predecessor in interest was in *bona fide* operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the*

reverse side hereof or attached hereto, and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order*, then said applicant shall show cause, if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

It is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission.

And it is further ordered, That the previous order issued in this proceeding, describing the authority to which applicant has been found to be entitled, upon compliance with the requirements therein specified, be, and it is hereby, vacated and set aside.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(Seal)

950 Appendix to the order of the INTERSTATE COMMERCE COMMISSION, Division 5, dated the 27th day of April, A. D. 1938

No. MC 60906

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of the commodities indicated, over regular routes, between fixed termini, and to and from intermediate points, is as specified below:

Commodities generally, except those of unusual value, and except high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Dallas, Tex., and Abilene, Tex., as follows:

From Dallas over U. S. Highway 80 to Metcalfe Gap, Tex., thence over U. S. Highway 80A to Abilene; also

From Dallas over U. S. Highway 80 to Abilene.

Return over these routes to Dallas.

All intermediate points except Albany, Metcalfe Gap, Palo Pinto, Caddo, and Brad.

Between Eastland and Ranger, Tex., and Breckenridge, Tex., as follows:

From Eastland over Texas Highway 67 to Breckenridge;

From Ranger over unnumbered highway to junction Texas Highway 67, and thence over Texas Highway 67 to Breckenridge; and

Return over these routes to Eastland and Ranger.

All intermediate points.

951 *Order*

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 8th day of September, A. D. 1938

No. MC 60906

Application of Texas & Pacific Motor Transport Company, a Corporation, Dallas, Texas

Upon consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the orders of March 15, 1938, and April 27, 1938, be, and they are hereby, vacated and set set aside.

By the Commission, division 5.

W. P. Bartel,
Secretary.

(Seal)

952 Modeled After
Form BMC-21

Application for Authority, Under Section 213, Motor Carrier Act, 1935, to Purchase the Properties of a Motor Carrier

Before the Interstate Commerce Commission

Docket No. BMC-F 108

Application of THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY to purchase certificate of convenience and necessity from the Ft. Worth Warehouse and Storage Company, Inc.

Applicant states:

I. That full and correct name of applicant is The Texas and Pacific Motor Transport Company, Business Address: Texas and Pacific Bldg., Dallas, Dallas County, Texas.

II. That applicant is a corporation doing business under its own name and that information respecting applicant is set forth in Exhibit A and supplemental exhibits, attached hereto and made a part hereof.

III. That information respecting the nature of the transaction proposed and the terms and conditions thereof, is set forth in Exhibit B and supplemental exhibits, attached hereto and made a part hereof.

IV. That there are set forth in Exhibit C, attached hereto and made a part hereof, the facts and circumstances relied upon to establish that the transaction covered by this application will promote the public interest by enabling the rail carrier with which applicant is affiliated to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition.

953 V. That applicant will submit such additional information to support the applicant's prayer herein as the Commission may require.

WHEREFORE, the applicant prays that the Interstate Commerce Commission enter an order approving and authorizing the transaction proposed as set forth in Exhibit B, and supplemental exhibits.

AND APPLICANT FURTHER PRAYS: That if the approval and authorization of the transaction covered by this application necessitate the transfer of

one or more Certificates of Public Convenience and Necessity or Permits, the Commission take such action in the premises as may be deemed necessary to consummate such transfers.

Dated this the 22nd day of August, 1936.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
By (Sgd.) J. L. LANCASTER, *President*
Post Office Address
T. & P. Bldg., Dallas, Tex.

OATH

State of Texas }
County of Dallas } ss.:

J. L. LANCASTER makes oath and says that he is the President of The Texas and Pacific Motor Transport Company; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Sgd.) J. L. LANCASTER

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this the 22nd day of August, 1936.

(Sgd.) MARY L. SCHUMAN
(Seal)

My Commission expires May 31st, 1937

999

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 21st day of September, A. D. 1938

No. MC 50544 Sub 5

Application of TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, a corporation, Dallas, Texas

After due investigation:

IT APPEARING, That applicant in accordance with the requirements of Section 206, Motor Carrier Act. 1935, includ-

ing due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order, and that the said applicant or predecessor in interest was in bona fide operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

IT IS ORDERED, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order.

IT IS FURTHER ORDERED, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

IT IS FURTHER ORDERED, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order*, then said applicant shall show cause, if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

AND IT IS FURTHER ORDERED, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission. Otherwise such protests shall be denied.

By the Commission, division 5.

(Seal)

W. P. BARTEL
Secretary

1000 Appendix to the order of INTERSTATE COMMERCE COMMISSION, Division 5, dated the 21st day of September, A. D. 1938

No. MC 50544 Sub 5

Application of TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, a corporation, Dallas, Texas

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of the commodities indicated, over regular routes, between fixed termini, and to and from intermediate points, is as specified below:

COMMODITIES GENERALLY, except those of unusual value, and except high explosives, livestock, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Dallas, Tex., and Abilene, Tex., as follows:

From Dallas over U. S. Highway 80 to Metcalfe Gap, Tex., thence over U. S. Highway 80A to Abilene; also

From Dallas over U. S. Highway 80 to Abilene.

Return over these routes to Dallas.

All intermediate points except Albany, Metcalfe Gap, Palo Pinto, Caddo, and Brad.

Between Eastland and Ranger, Tex., and Breckenridge, Tex., as follows:

From Eastland over Texas Highway 67 to Breckenridge;

From Ranger over unnumbered highway to junction Texas Highway 67, and thence over Texas Highway 67 to Breckenridge; and

Return over these routes to Eastland and Ranger.

All intermediate points.

This order covers operations purchased from Fort Worth Warehouse & Storage Co., No. MC 60906, pursuant to MC-F-108, approved May 20, 1937, 5 M. C. C. 89.

1001 *Supplemental Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 28th day of July, A. D. 1941

No. MC 50544 Sub 5*

Application of TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, a corporation, Dallas, Texas

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

IT IS ORDERED, That the order entered therein September 21, 1938, be, and it is hereby, amended by attaching thereto the following conditions:

Service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas & Pacific Railway Company;

Applicant shall not serve, or interchange traffic at any point not a station on a rail line of the Texas & Pacific Railway Company;

Shipments transported by applicant shall be limited to those which it receives from or delivers to the Texas & Pacific Railway Company under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail;

All contractual arrangements between applicant and the Texas & Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties; and

Such further specific conditions as the Commission may, in the future, find it necessary to impose in order to restrict applicant's operation, to service which is auxiliary to, or supplemental of, rail service.

IT IS FURTHER ORDERED, That in all other respects, the order of September 21, 1938, shall remain in full force and effect.

AND IT IS FURTHER ORDERED, That this order shall become effective the 27th day of August, A. D., 1941, unless on the Commission's own motion or for good cause shown

* The above number was assigned to cover that portion of the operating rights applied for by Fort Worth Warehouse & Storage Co., under Docket No. MC 69906, and acquired by applicant herein pursuant to Finance Docket No. MC-F 108, approved May 20, 1937, 5 M. C. C. 82.

by applicant or any other party in interest, it is otherwise ordered.

By the Commission, division 5.

W. P. BARTEL
Secretary

(Seal)

1003 Before the Interstate Commerce Commission

Application of THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

Docket No. MC-50544 Sub 5

Motion of Applicant to Vacate or Postpone Effective Date of Order of Division 5 Amending Certificate

To Said Honorable Commission:

The Texas and Pacific Motor Transport Company, herein referred to as Transport Company, pursuant to an order of the Commission dated May 20, 1937, issued in Finance Docket MC-F-108, acquired the common carrier operating rights of Fort Worth Warehouse & Storage Company covering certain routes between Dallas, Texas and Abilene, Texas.

The operating rights of Fort Worth Warehouse & Storage Company were so called Grandfather Rights which were confirmed to it and to the Transport Company under Docket No. 60906. The Transport Company paid a substantial sum, $25,000., to Fort Worth Warehouse & Storage Company for said operating rights, making a down payment of $1,000. and final payment of $24,000. upon receipt of the Commission's order authorizing the acquisition.

1004 The order of the Commission approving Transport Company's acquisition of the operating rights of Fort Worth Warehouse & Storage Company provided that the operations of the Transport Company should be supplemental and auxiliary to the rail service of The Texas and Pacific Railway Company, and that service should not be rendered nor traffic interchanged at any point not on the line of The Texas and Pacific Railway Company.

Without further procedure, and based only upon further consideration of a record nearly five years old, Division 5 of the Commission entered an order providing that on the 27th day of August, 1941, unless otherwise ordered by the Commission on its own motion, or unless for good cause shown by applicant or any other party at interest, operations of applicant as successor to Fort Worth Warehouse

& Storage Company would be subject to certain conditions, the pertinent ones being:

"Service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas & Pacific Railway Company;

"Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the Texas & Pacific Railway Company;

"Shipments transported by applicant shall be limited to those which it receives from or delivers to the Texas & Pacific Railway Company under a through bill of
1005 lading covering, in addition to movement by applicant, a prior or subsequent movement by rail;"

The manifest object of the conditions proposed is to confine the operations of the Transport Company in the manner provided in the order of the Commission in Docket MC-F-108 approving the purchase of operating rights. It is submitted, however, that the third condition, the one which limits shipments to those received from or delivered to the Railway Company and having a prior or subsequent movement by rail, is not necessary and will prevent full use of the service of the Transport Company as an auxiliary and supplement to the service of The Texas and Pacific Railway Company.

In many instances the movement of freight by truck between stations on the line of The Texas and Pacific Railway Company will be of no advantage to the public or to the carriers involved, if it is necessary for such shipments to have a prior or subsequent haul by rail.

Such an operation, in frequent instances, would require movement by local way freight trains necessarily operated on slow and irregular schedules, or substantial delays awaiting schedules of through merchandise trains, which because of the sparsely settled nature of the territory cannot be operated at frequent intervals.

It has been, is and will continue to be the purpose of Transport Company to use the service of The Texas and Pacific Railway Company to the greatest possible
1006 extent in transportation over the route involved, and by far the larger part of such interstate freight moves in whole or in part by rail; and as far as can be seen into the future, it will continue to be so transported.

The proposed restriction, however, as applied to the operation in question, is inflexible and is detrimental to the public interest, in that it will impede the movement of certain freight and will result in the operation of a large

number of lightly loaded freight cars. Especially will such a condition injure service to smaller towns, which are the towns most in need of fast and flexible service.

As may be shown by the actual record of operations, the service which Transport Company has been performing is auxiliary and supplemental to the service of the Railway Company, and there is no need for imposition of the condition under discussion.

Further, and with respect to the use of lightly loaded freight cars which will necessarily result from applying the rail haul condition, it is asserted that such a situation is contrary to the public interest, not only because of the uneconomical operation, but particularly because there is increasing difficulty in keeping the supply of freight cars adequate to meet the demands which have been and will be imposed by the present national emergency.

The Transport Company stands ready and willing to adduce proof of the foregoing and of other facts show-
1007 ing that it is not necessary or proper to impose upon it the prior or subsequent rail haul condition with respect to the operating rights it acquired from Fort Worth Warehouse & Storage Company between Dallas and Abilene.

The Commission is therefore requested to withdraw said order of July 28th, 1941, or to eliminate therefrom the third condition therein set forth; in the alternative, the Commission is requested to postpone the effective date of such order until such time as it shall accord a hearing to Transport Company and fully consider the effect of said conditions on the operations in question.

Respectfully submitted,

R. S. Shapard
Robert Thompson
M. E. Clinton
S.W. Lancaster
Attorneys for The Texas and Pacific Motor Transport Company

Certificate of Service

I hereby certify that the foregoing document has been served upon all parties of record by mailing a copy to each.

S. W. Lancaster
Of Counsel

1008 RAILROAD COMMISSION OF TEXAS
AUSTIN

August 11, 1941

Commissioners
Ernest O. Thompson
Chairman
Jerry Sadler
Olin Culberson
C. F. Petet, Secretary

Honorable Joseph B. Eastman, Chairman
Interstate Commerce Commission
Washington, D. C.

Dear Commissioner Eastman:

You are addressed as Chairman of the Division No. 1 which is in charge of cooperation with State Commissions.

The Texas and Pacific Motor Transport Company operates between Dallas and Abilene, Texas, Docket MC-50544, Sub. 5 serving various intermediate towns between the two named cities on the line of the Texas and Pacific Railway Company and subsidiary railway companies. Its operating rights were acquired from the Fort Worth Warehouse and Storage Company with the approval of the Railroad Commission of Texas, and with the approval of the Interstate Commerce Commission, which entered an order under Docket MC-F-108.

We understand there is a proposal to restrict operations of the above transport company to shipments having a prior or subsequent haul by rail.

Such a restriction will impair service in connection with shipments arriving at points on the route too late to utilize through merchandise train service and shipments which are going to or from the smaller points at which through trains cannot stop.

We do not know whether or not the Commission is entering upon a policy of reforming all certificates of railway owned carriers as a general proposition; however, whether or not such be the case, we believe that such a restriction should not be imposed on operations such as the one in question, because Texas, and especially West Texas, is not densely populated, and there is not enough business to justify the operation of frequent fast freight trains, without which a restriction such as the one mentioned would be detrimental to the public.

Unless railways can keep enough less-than-carload freight it appears inevitable that local stations at many of the smaller points will have to be eliminated, and the affected communities will lose the advantage thereof and of the service of a full time resident agent.

These considerations argue strongly against the imposition of conditions which would make ineffective motor carrier operations by rail subsidiaries. Particularly would this appear to be true so long as independent
1009 motor carriers continue to enjoy the successful operations which exist and which have existed for the past several years, and in cases where the rail operation of a truck line is, as in this case, merely the continuation of an existing motor service.

Very truly yours

RAILROAD COMMISSION OF TEXAS
JERRY SADLER
OLIN CULBERSON
Commissioners

CC: Commissioner Claude R. Porter
Commissioner Wm. E. Lee

1010 C-1-SUP-PROP.

Supplemental Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 16th day of August, A. D. 1941

No. MC-50544 Sub 5*

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

IT IS ORDERED, That the Supplemental Order entered July 28, 1941, be, and it is hereby, vacated and set aside.

* The above number was assigned to cover that portion of the operating rights applied for by Fort Worth Warehouse & Storage Co., under Docket No. MC 60906, and acquired by applicant herein pursuant to Finance Docket No. MC-F 108, approved May 20, 1937, 5 M. C. C. 89.

IT IS FURTHER ORDERED, That the order entered September 21, 1938, be, and it is hereby, amended by attaching thereto the following conditions:

Applicant shall not render service from or to, or interchange traffic at, any point not a station on a rail line of the Texas & Pacific Railway Company.

The authority herein considered shall be subject to such further limitations or restrictions as this Commission may hereafter find it necessary to impose in order to restrict applicant's operations to service which is auxiliary to, or supplemental of, train service of said railway company, and in order to ensure that the service rendered shall not unduly restrain competition.

IT IS FURTHER ORDERED, That in all other respects, the order of September 21, 1938, shall remain in full force and effect.

AND IT IS FURTHER ORDERED, That this order shall become effective the 15th day of September, A. D., 1941, unless on the Commission's own motion or for good cause shown by applicant or any other party in interest, it is otherwise ordered.

By the Commission, division 5.

(Seal)

W. P. BARTEL
Secretary

1011

August 19, 1941

Railroad Commission of Texas
Austin, Texas

Gentlemen:

I have your letter of August 11, 1941, with respect to the application of Texas & Pacific Motor Transport Company, Dallas, Texas, Docket No. MC-50544 Sub 5, which embraces the portion of the operations purchased from Fort Worth Warehouse & Storage Co., No. MC-60906, pursuant to the proceeding MC-F-108, approved May 20, 1937.

On July 28, 1941, the Commission entered a supplemental order in this proceeding prescribing certain restrictions to the operations, including a restriction that, "Shipments transported by applicant shall be limited to those which it receives from or delivers to the Texas & Pacific Railway Company under a through bill of lading covering,

in addition to movement by applicant, a prior or subsequent movement by rail". This restriction was one of the restrictions included in the Commission's finding in Kansas City Southern Transport Company, application No. MC-61438, and which appears in several of the Texas & Pacific Motor Transport Company authorizations from this Commission.

The applicant immediately submitted a petition to the Commission pointing out that the restrictions im-
1012 posed in the supplemental order were at a variance with those specified in the purchase proceeding MC-F-108, reported in 5 M. C. C. 89, and on August 16, 1941, a further supplemental order was entered, vacating the order of July 28, referred to above, and imposing only the restrictions as specified in the finance proceeding.

I thank you for your letter and trust that this information clarifies the status of the matter.

Very truly yours,

CLAUDE R. KORTER
Acting Chairman of Division I

GEJ:GHH

Certificate of Public Convenience and Necessity

1013 C-5.1

No. MC-50544 Sub 5*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 21st day of September, A. D., 1942

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate of foreign commerce as a motor carrier; and the Commission so finding;

* This certificate embraces the operating rights purchased by the above-named carrier from Fort Worth Warehouse & Storage Co., Docket No. MC 60906, pursuant to MC-F 108, approved May 20, 1937

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over regular routes,

Between Dallas, Tex., and Abilene, Tex., as follows:

From Dallas over U. S. Highway 80 to junction Alternate U. S. Highway 80, thence over Alternate U. S. Highway 80 to Abilene;

From Dallas over U. S. Highway 80 to junction Alternate U. S. Highway 80, thence over Alternate U. S. Highway 80 to junction Texas Highway 16, thence over Texas Highway 16 to Junction U. S. Highway 80, thence over U. S. Highway 80 to Abilene; and

Return over these routes to Dallas.

Service is authorized to and from all intermediate points on the above-specified routes except Albany, Metcalf Gab, Palo Pinto, Caddo, and Brad.

1014 Between Eastland and Ranger, Tex., and Breckenbridge, Tex., as follows:

From Eastland over Texas Highway 67 to Breckenbridge,

From Ranger over unnumbered highway to junction Texas Highway 67, and thence over Texas Highway 67 to Breckenbridge, and

Return over these routes to Eastland and Ranger.

Service is authorized to and from all intermediate points on the above-specified routes.

Applicant shall not render service from or to, or interchange traffic at, any point not a station on a rail line of the Texas & Pacific Railway Company.

The Authority herein considered shall be subject to such further limitations or restrictions as this Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of train service of said railway company, and in order to insure that service rendered shall not unduly restrain competition.

And it is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate.

By the Commission, division 5.

W. P. Bartel
(Seal) *Secretary*

1016 Before the Interstate Commerce Commission

The Texas and Pacific Motor Transport Company—Purchase of Portion of Certificate of W. A. Johnson, Doing Business as Johnson Motor Lines

Docket No. MC F-107

The Texas and Pacific Motor Transport Company—Purchase of Certificate of Fort Worth Warehouse and Storage Company

Docket No. MF-F-108

Transcript of hearing

Dallas, Texas, November 11, 1936
10:00 o'clock A. M.

Before: Joint Board No. 171, composed of C. V. Terrell, Chairman, Alex Grouchy and Robert Valdez (Not present).

Examiner Frank A. Clifford, sitting in for the Commission.

Met pursuant to notice.

Appearances:

T. D. GRESHAM, R. S. SHAPARD, and SAM LANCASTER, T & P Building, Dallas, Texas, appearing for applicant;

WILLIAM F. YOUNG, Fort Worth, Texas, appearing
1017 for Fort Worth Warehouse & Storage Company;

FRANK H. RAWLINGS, 1807 Fair Building, Fort Worth, Texas, appearing for W. A. Johnson.

1020 PROCEEDINGS

Chairman TERRELL: The Board will come to order. I want to make this statement. The Interstate Commerce has referred for hearing before Joint Board No. 171, composed of Messrs. Alex Grouchy of Louisiana, Robert Valdez of New Mexico, and C. V. Terrell of Texas, Application No. MC-F-107, The Texas and Pacific Motor Transport Company, purchase of a portion of certificate of W. A. Johnson, doing business as Johnson Motor Lines, and Application No. MC-F-108, Texas and Pacific Motor Transport Company, purchase of certificate of Fort Worth Warehouse & Storage Company. Since the two transactions involve the same applicant, and since both applications have been referred to the same Joint Board, both cases will be heard on a consolidated record, and disposed of by one report and order.

The Board wishes to advise that Mr. Valdez, the New Mexico member, has wired that he will not sit in the hearing of these matters. However, a copy of the consolidated transcript of testimony will be furnished him and he will participate in the disposition of the applications.

The Board will now take the oral appearances in the case.

Mr. LANCASTER: R. S. Shapard and Sam Lancaster, appearing for the applicant.

Mr. YOUNG: William F. Young, Fort Worth, for
1021 the Fort Worth Warehouse & Storage Company.

Mr. PHINNEY: I would like to have the permission of the Board to enter the appearance of Frank H. Rawlings, 1807 Fair Building, Fort Worth, Texas, appearing for W. A. Johnson Motor Lines.

I want to enter my appearance, Carl L. Phinney, 1216 First National Bank Building, Dallas, Texas, appearing for the Merchants Fast Motor Lines, Fort Worth, Texas, as our interests may appear.

Chairman TERRELL: All intervenors in the proceedings are requested to file a formal petition if they desire to actually participate in the case. Otherwise they will be considered merely an observer.

Mr. PHINNEY: Mr. Chairman, here is our position about the matter. I wanted to hear a statement of the nature of the case, and if possible we do not want to intervene until and unless our interests are affected. We have no desire to intervene and I would like permission after the case is opened up, if we do discover our interests are affected, I desire to file a petition before the close of the hearing.

Chairman TERRELL: All right. Before proceeding with the taking of the testimony, the Board wishes to admonish the parties that no free transcripts of the testimony will be available. If anyone wishes a copy thereof, please place your order with the reporter some time during the
1022 course of the hearing, preferably at the recess period or at the close of the hearing.

Now, all witnesses in these cases will stand up and be sworn.

Mr. LANCASTER: At the outset I should like to tender the applications in evidence, and ask that they be considered as evidence in the case.

Chairman TERRELL: All right; they will be admitted in evidence as testimony.

Mr. LANCASTER: And the exhibits attached thereto, of course.

T. E. HUFFMAN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your name, Mr. Huffman.
A. T. E. Huffman.
Q. Where do you live, sir?
A. Dallas, Texas.
Q. Are you connected with the applicant in this case?
A. I am.
Q. In what capacity?
A. General Freight Agent.
Q. Do you devote a substantial part of your time to the truck operations which are conducted by the applicant?
A. I do.
1023 Q. The full name of the applicant is the Texas and Pacific Motor Transport Company?
A. Yes, sir.
Q. Under the laws of what state is it incorporated?
A. Delaware.
Q. In what state is it authorized to do business?
A. Louisiana, Texas and New Mexico.
Q. The applicant is a subsidiary of what company?
A. The Texas & Pacific Railway Company.

Q. It owns or controls all the capital stock of the applicant?

A. It does.

Q. The capital will appear from the financial statements attached to the financial statements to be offered by other witnesses?

A. It will be.

Q. When was applicant incorporated?

A. June, 1929, I think is the correct date.

Q. Well, our charter is attached to the application; that will show it. How long has applicant been engaged in the operation of trucks?

A. Since September, 1935.

Q. Do you have a map attached to the application, or supplemental to the map attached to the application, which shows the extent of the truck operations of this applicant?

A. I do.

1024 Q. That map shows in red outlines the two operations of the applicant?

A. That is correct.

Q. A map exactly like this one is filed under both Docket Nos. 107 and 108, with the exception that the operations to be acquired are different under each of those dockets, one map showing the operations of the Fort Worth Storage and Warehouse Company, and the other map showing the operations of the West Texas Transportation Company, to be acquired?

A. That is correct.

Q. Where do the red lines appear on that map?

A. From Monahans, Texas, to Lovington, New Mexico, and from Shreveport, Louisiana, to Cypress, Louisiana.

Q. By two routes?

A. By way of Pleasant Hill, and the other route by the way of Natchitoches, these being the two principal towns on those routes.

Q. Originally attached to the applications Nos. 107 and 108 are maps showing the other common carrier motor carriers, or all of those operating along the routes of the lines to be acquired; is that correct?

A. Yes, sir.

Q. Approximately how many truck miles have been operated by applicant?

A. Half a million.

1025 Q. The two routes proposed to be acquired in these two applications are parallel or substantially parallel to the lines of the Texas and Pacific Railway Company and subsidiary rail lines; is that correct?

A. That is correct.

Q. The Johnson application, No. 107, exactly parallels the line of the T. & P. Railway Company?

A. That is correct.

Q. The line of the Fort Worth Warehouse & Storage Company parallels the T. & P. Railway Company, and also reaches a point on a subsidiary of the T. & P. Railway Company. What town is that, and what is its subsidiary?

A. The Weatherford, Mineral Wells & Northwestern Railway.

Q. What town is that on the Weatherford, Mineral Wells & Northwestern Railway?

A. Mineral Wells, Texas.

Q. Now, what is the next town which is on the subsidiary company, and the name of the company?

A. The C. & N. E. Railway, Cisco and Northeastern; Breckenridge and Parks, Texas.

Q. With the possible exception of Albany, Texas, are there any towns which are served by the Fort Worth Warehouse & Storage Company which are not also served by the T. & P. System lines?

A. No town located on a railroad. There is one
1026 little inland store called Brad, at the forks of the road up there, a restaurant and store.

Q. It is substantially true, in any event, that in both of these routes proposed to be acquired, they serve only towns and only localities on the T. & P. System Lines?

A. That is correct.

Q. Describe, if you will, first, the territory in which the Johnson Motor Lines route lies, that is, from Abilene to Big Springs, Texas.

A. Every town served by that truck line is also served by the T. & P., and the T. & P. Motor Transport.

Q. Name over the principal ones?

A. Merkle, Trent, Sweetwater, Roscoe, Loraine, Colorado, Westbrook, Iatan, Coahome, Big Spring.

Q. Now, in buying out that portion of the routes, you acquired plates for the operation of three common carrier trucks?

A. That is correct.

Q. I want you to outline just what your plan of operation is if this application is approved. In other words, how will you utilize trucks as compared with the manner in which they are now used in the service of these towns?

A. The tonnage between Abilene and Sweetwater, Texas, from the distributing points such as Dallas and Fort Worth, will be loaded on Abilene, in through cars.

Q. Loaded on Abilene. They will be loaded at what point?

1027 A. Dallas and Fort Worth, into a set-off car at Abilene, which will be handled in over night trains arriving at Abilene, scheduled 4:15 in the morning.

Q. What will happen to that tonnage after it arrives at Abilene?

A. The tonnage for points beyond Abilene, not including Abilene or Sweetwater, will be taken out at Abilene and loaded on a truck scheduled to depart around 5:00 A. M., from Abilene.

Q. And by the time that truck arrives at Sweetwater it will have unloaded the truck?

A. He will be empty.

Q. In the same manner, you will load freight for Dallas and Fort Worth, in a car going from Sweetwater, load up on a truck which will carry it from intermediate towns between Sweetwater and what place?

A. Colorado, Texas.

Q. But not including Colorado?

A. No, sir; that car will have been set out with a through train at Sweetwater at 5:15 A. M.

Q. At Colorado, Texas, there will be a car containing freight also for intermediate points between there and Big Spring?

A. Colorado and Big Spring, not including Big Spring.

Q. At the present time, how do you move your freight into those intermediate points?

1028 A. We handle it in—there is a set-out car at Abilene, Sweetwater and Colorado, Texas, at the present time.

Q. As you have no trucks, it is handled on a train?

A. On a local train.

Q. Your local train service, if I understand the facts, is an every other day service between Abilene and Big Spring?

A. Yes, sir; it runs east one day and west the next. It runs from Baird to Big Spring, east of Abilene on irregular service.

Q. What are the functions of a local train apart from l. c. l. freight?

A. Do station work, industrial work at the stations and side tracks will be handled.

Q. Switching at industries and so forth?

A. Yes, sir; runs on irregular schedules.

Q. Without going into too many details, state what will be in general the saving in time of delivery or time in trans-

it on less than carload freight to these intermediate points you have spoken of, if we can operate trucks as compared with our present service?

A. Well, it will mean from one hour to twenty-four hours.

Q. Abilene will be how many hours; twelve?

A. Yes, I think ten or twelve hours, and it will be regular schedules. As it is now, it is not on regular schedules.

Q. Owing to the duties of this train?

1029 A. That is right. It has to do the station switching, and it is heavier some days than others.

Q. It is the policy of the T. & P. Railway to operate a through train west of Dallas and Fort Worth each evening to what points?

A. It operates out of Dallas, handling merchandise which is also picked up as it goes through Fort Worth, merchandise loaded for that station, and operates into Big Spring, Texas, a distance of about three hundred miles.

Q. Approximately what schedule does it make?

A. Pretty near passenger train schedule; leaves here at 8:00 o'clock at night, and leaves Fort Worth at 10:00 o'clock, and gets to Big Spring 8:00 A. M.. the following morning.

Q. At every point where the tonnage is heavy enough, he sets out a car as he goes along. Is that right?

A. Yes, sir.

Q. Now, it is impossible for him to stop to unload l. c. l. freight from a car and still maintain his schedule?

A. That is right. It is necessary to set out cars in order to make his schedule.

Q. Does that train carry a route car on it, that is, a car containing freight, we will say, to points between Abilene and Colorado?

A. Yes, sets out one day, for example, at Abilene, and the following day the local comes from the west and it is worked back.

1030 Q. As a rule, the freight that is in the route car could be put into the cars that are destined for Abilene proper, or Sweetwater proper?

A. That is right.

Q. Except for the fact they have to be handled on the local train, and there isn't time to rework them there?

A. That is right.

Q. About what is the population of the territory between Abilene and Big Spring, or including Abilene and Big Spring, or do you have that information?

A. No, I don't. Those are heavy, but I don't know.

Q. We will offer that later. We have the information, but not with this witness. Is that country out there on the upgrade?

A. Very muchly so, the last two years.

Q. You have noticed an increase in your traffic?

A. Oh, yes, especially at the principal set-out points.

Q. Do those towns out there, most of them, serve a considerable outlying area?

A. Yes, they have. The population of the town, say for example, would be two or three thousand; they serve a territory with a population of eight or ten thousand, fifteen or twenty miles distant, on either side.

Q. The T. & P. Railway is the only railway running out there?

A. That is right.

1031 Q. Is it true to say that those towns serve a larger area than towns of comparable size in other districts where they have more transportation facilities?

A. That is correct.

Q. Now, the T. & P. Motor Transport Company entered into a contract with Johnson some time during the month of June, 1936; is that correct?

A. Yes, sir.

Q. A copy of that contract is attached to the application.

A. It is.

Q. That contract recites the facts about the operations acquired and the purchase price to be paid for them?

A. It does.

Q. It provides, amongst other things, that it is to become effective upon approval by the state and federal regulatory authorities; is that correct?

A. That is correct.

Q. What is the consideration?

A. Twelve thousand dollars.

Q. And what are the rights acquired by the applicant?

A. All the rights that are now held by the seller, that is, to operate three trucks or plates in that territory.

Q. All franchises held by him between Abilene and Big Spring?

A. Yes, sir.

Q. Also, the traffic records go with that?

1032 A. That is right, records and good will.

Q. And any arrangements he may have at any town along there, we have the option of taking those over for our own account?

A. That is correct.

Q. You first applied to the Railroad Commission of Texas for approval of this application?

A. I did.

Q. Was that approval given?

A. It was.

Q. The same thing is true as to the approval of the application and as to the contents of the contract also with respect to the Fort Worth Warehouse & Storage Company?

A. It is.

Q. Now, let us turn to the territory covered by the Fort Worth Warehouse & Storage Company, application No. 108. That line extends from Dallas and Fort Worth west to Abilene, by two routes, you have testified?

A. Yes, sir.

Q. What are the principal sources of freight from Dallas and Fort Worth, what is the nature of those two cities? What is their main enterprise?

A. They both are wholesale distributors, mail order houses; in fact, they serve this entire territory, you might say. Dallas and Fort Worth are the distributing centers for central and North Texas

1033 Q. East and west out of there?

A. Yes, sir.

Q. Would you say the two cities combined probably distribute more merchandise than any other two cities in the state?

A. I don't think there is any question about it. My investigation showed that some time ago.

Q. Now, outline briefly the territory west of Fort Worth, the main towns.

A. The principal towns involved are Weatherford, Mineral Wells, Breckenridge, Strawn, Eastland, Cisco, Baird, Clyde and Abilene.

Q. Those towns are west of Fort Worth?

A. Yes, sir.

Q. Predominately consumers, or are they producing towns?

A. They are consumers.

Q. From what point does most of their traffic move?

A. Dallas and Fort Worth.

Q. The same thing is true as to the towns on the Johnson route, is it not?

A. Yes, sir.

Q. Are Dallas and Fort Worth highly competitive in their distribution?

A. Yes, sir.

Q. From the standpoint of railroad operation, what is the effect of that situation?

1034 A. Well, on our line, serving West Texas, as well as East Texas, being the only rail line that does that, it is very necessary that we accord the same service, or practically the same for Dallas and Fort Worth.

Q. How far apart are Dallas and Fort Worth?

A. Thirty-one miles or a little better. It is thirty-five miles by highway.

Q. Is it fair to say that the metropolitan areas of the two towns almost interlock?

A. Yes, sir.

Q. So that, for example, if you operate a set-out car from Dallas, let us say, to Ranger, you must operate one from Fort Worth. Is that correct?

A. Yes, sir; we will have to do that. We do do that.

Q. And to some points in East Texas, if you operate a car from Fort Worth you must operate a car from Dallas, and *vice versa*?

A. That is right.

Q. What are the facts as to whether or not the aggregate of the freight from both towns could easily be put into one car?

A. In most cases they could be; in some cases they could not be.

Q. Why do you not consolidate that freight into one car instead of two cars?

A. Well, it is physically impossible.

Q. What time of day does that l.c.l. freight gen-

1035 erally come to you?

A. Late in the evening, as a rule. I would say between four and six o'clock, principally.

Q. Now, you run a train, you have already testified, westbound, that leaves Dallas eight o'clock and Fort Worth ten o'clock.

A. Westbound, yes, sir.

Q. Now, it is a physical impossibility, as you referred to it, to take a car from Dallas to Ranger, over to Fort Worth, and switch that car up to the tracks for loading of the freight from Fort Worth to Ranger?

A. Yes.

Q. In time for it to leave on the schedule on which it operates?

A. That is correct.

Q. That schedule has been arrived at from a consideration of speed, and the other trains which must operate over the railroad; is that correct?

A. Yes, and the further fact it is necessary that you get your freight to destination for early in the morning delivery.

Q. There is a demand for expeditious handling on l.c.l. freight?

A. Yes, sir.

Q. Is is heavier now than five years ago?

A. The freight, or demand?

Q. The demand.

A. Yes, sir, very much so.

Q. In fact, is it true that it has increased every year?

1036 A. Yes, sir.

Q. And there is, in substance, a demand for almost express service?

A. Yes, sir; you have to give that.

Q. If you fail to give that, what happens?

A. You lost your business, to competition, and your revenue.

Q. Now, Fort Worth Warehouse and Storage Company operates trucks over the route outlined on the map, including between Dallas and Forth Worth?

A. They do.

Q. How many truck trips per day are they authorized to run?

A. Twenty-eight.

Q. Is that twenty-eight round trips or fourteen round trips? Are there twenty-eight round trips a day?

A. Yes, sir.

Q. Now, what is your plan for the utilization of those trucks operating between Dallas and Fort Worth?

A. That we will consolidate some of the light cars now being loaded into each of the towns, and consolidate them into one car by using the trucks to handle the tonnage between the two stations.

Q. Now, taking an example of a town in East Texas, and the one in West Texas. Please illustrate just what the physical handling of that freight is now.

A. Well, we will take Terrell, in East Texas.

1037 Q. At the present time you operate a car from Dallas, and one from Fort Worth to Terrell?

A. We do.

Q. About what does the tonnage of that Fort Worth car run?

A. About seven hundred and fifteen pounds per day, average.

Q. About what does the tonnage of that Dallas car run, just approximately?

A. I would say about thirty-five hundred pounds a day.

Q. So that car has ample room to carry the Fort Worth tonnage as well?

A. It does.

Q. But because of operating conditions it is impossible, as a railroad company, to consolidate it; is that correct?

A. That is correct.

Q. How will you handle it if this acquisition is approved?

A. We will truck the tonnage from Fort Worth over to Dallas.

Q. About what time of day will that tonnage be completed into your Fort Worth station?

A. I should say around six or six-fifteen, six o'clock anyway.

Q. That tonnage that would ordinarily go into a separate car will be put aside on your platform and loaded from there on your trucks?

A. That is right.

Q. And he will take it over to your platform at
1038 Dallas for loading into the car operating from Dallas to Terrell?

A. That is correct.

Q. Now, the same thing is true going the other way?

A. Yes, sir, it is.

Q. Just name some West Texas town, just as an illustration.

A. Well, I would say take Ranger.

Q. So right. That freight would be moved from your Dallas station to Fort Worth station, and there put into your car; is that correct?

A. That is right. The tonnage would be rather light out of Dallas.

Q. I will ask you, if you know, about what the Fort Worth loading is on cars that you think you would be able to eliminate by use of this service.

A. You mean the total of the two?

Q. The average load per car.

A. I would say four thousand pounds.

Q. Four thousand pounds?

A. Yes, sir; that might be a little high.

Q. Then for every truck trip that you operated, you would save almost two cars?

A. That is right.

Q. Now, then, what would be the most cars, according to your computation, that moves now from Dallas and Fort Worth to points in East Texas that would be eliminated through consilidation?

1039 A. Twelve cars.

Q. Now, about what would you figure would be the average number?

A. That is East Texas you are talking about?

Q. Yes.

A. I would say eight cars.

Mr. GROUCHY: A day?

The WITNESS: Yes, sir.

Chairman TERRELL: Would that freight be carried on trucks?

The WITNESS: No, sir; trucks over to Dallas from Fort Worth, and loaded into a car here.

Mr. GROUCHY: Did I understand you to say that truck movement would be an average of eight cars a day?

Mr. LANCASTER: He asked you if there is an average of eight cars a day from Fort Worth to Dallas.

The WITNESS: You mean Dallas proper?

Mr. GROUCHY: Yes.

The WITNESS: No, that is through Dallas east, for Terrell, Tyler, Shreveport.

Chairman TERRELL: Well, I don't understand, myself.

The WITNESS: For instance, Mr. Terrell, we have cars loaded at Fort Worth for Terrell, Wills Point, Mineola, Tyler, Longview and Marshall, just roughly speaking. That is eastbound tonnage out of Fort Worth. We have

1040 to do this in order to give Fort Worth merchants service to those towns. They sell those goods and they feel they have to have it there in competition with Dallas people. Now, we have to run those cars through Dallas out of Fort Worth on through trains, and give seven o'clock delivery the following morning. That tonnage is rather light. We bring it over by truck from Fort Worth instead of handling it by train, and put it into a Dallas car for those same points. We have a car from Dallas for the same towns. We would save handling a box car from Fort Worth.

Chairman TERRELL: Eight of them?

The WITNESS: Per day, by the use of trucks between Dallas and Fort Worth, which is the only way we can consolidate the cars.

Chairman TERRELL: That would increase the trucks from Dallas to Fort Worth?

The WITNESS: No, sir.

Mr. LANCASTER: Not a bit.

The WITNESS: No, sir; he has authority to operate twenty-eight truck trips per day. We would not operate over five or six truck trips per day.

Chairman TERRELL: It would take off that many then?

The WITNESS: Yes, sir. He has twenty-eight truck trips per day. We would not operate that many.

Chairman TERRELL: You are taking over all of their permit?

The WITNESS: Yes, sir.

1041 Chairman TERRELL: They don't have any right then to haul at all?

The WITNESS: No, sir; they have nothing.

Chairman TERRELL: You have charge of it.

The WITNESS: Yes, sir.

Mr. GROUCHY: Of course, you are just illustrating the condition between Fort Worth and Dallas to Eastern Territory, which for the purpose of this thing is not included in this?

The WITNESS: Other than to illustrate the utilization of the saving of cars. I will also give you an example of it west from Dallas.

Q. (By Mr. LANCASTER) Now, let us take west. How many cars do you figure you would average saving to the west from the aggregate of Dallas and Fort Worth?

A. I would say ten cars.

Q. Then that would be twenty cars average saving per day?

A. Yes, sir.

Q. Average, now?

A. It would be eighteen cars.

Q. Now, to what other points, on what other routes are cars operated from Dallas and Fort Worth by the T. & P. Railway Company, where one car would be ample to hold the tonnage?

A. Well, that is to stations on what is known by the railway company as T. C. Division; that is, the T. & P. operate a train, a portion of a road between Texarkana and

1042 Fort Worth by way of Sherman, Paris and Denison, up there.

Q. As well as over their main route down through Longview?

A. Yes, sir.

Q. How many cars do you figure you could save up there?

A. Two cars.

Q. So that you think you could save an average of twenty cars per day?

A. Yes, sir; I think so. Some days it would not run that many, and some days a little more.

Q. What have you had to some points where you would ordinarily take the Fort Worth tonnage over to Dallas or vice versa, where it averaged maybe three thousand pounds, if some day you should get six or seven thousand pounds, what would you do?

A. We would operate a car. It is much more economical from our set up to operate cars if we can, and we prefer doing it.

Q. So that the maximum use of the highway would be ten or eleven truck trips?

A. Between Dallas and Fort Worth?

Q. Yes, that would be your average.

A. Average maximum, yes.

Q. Are they one way trips or round trips?

A. They would be round trips. No, five round trips.

Q. Ten one way trips?

A. Yes, sir.

Q. Now, as to the tonnage that would be into the
1043 Dallas cars, compared to that which would be into the Fort Worth cars, would they offset?

A. Yes, sir; about offset. Maybe a thousand pounds difference between the two.

Q. So that would be very economical transportation for you to run a seven thousand pound truck loaded over to Dallas, and then he can pick up another seven thousand pound load and run back, can he?

A. That is right; that is the plan of operation.

Q. Do you know about what it would cost you to operate per truck mile, to operate in that service?

A. Ten cents.

Q. Do you think that is a liberal estimate?

A. Very liberal.

Q. How many miles is it?

A. Thirty-five miles one way.

Q. Thirty-five miles from terminal to terminal?

A. Yes, sir.

Q. So that would give you a cost of $3.50?

A. Yes, sir.

Q. And at ten trips a day that would be how much?

A. $35.00.

Q. Now, that tonnage that you handled in that manner, you would have to handle over two platforms, wouldn't you?

A. Yes, sir.

1044 Q. In other words, you would have to assemble it at Fort Worth as if it were going to the car, and then it would be handled over the Dallas platform?

A. Yes, sir.

Q. What do you figure as to the cost of handling traffic across the platform?

A. In the neighborhood of three cents per hundred pounds.

Q. The billing and all of that would be done as it is now?

A. Yes, sir.

Q. In other words, all of the tonnage from Dallas would be billed from there regardless of whether it actually went into the train?

A. Yes, sir.

Q. What would be the average daily tonnage that you would handle in that manner?

A. I would say sixty-five thousand pounds; that is, both between Dallas and Fort Worth.

Q. About thirty-two or thirty-three thousand pounds one way, and thirty-two thousand the other?

A. Yes, sir.

Q. Now, you have testified as to how you would handle freight between Abilene and Big Spring by utilizing the trucks to distribute that merchandise from your set-out points. Would that same thing be true, in principal, we will say, on the part of the Fort Worth Warehouse

1045 & Storage Company route west of Fort Worth?

A. It would.

Q. It would result in a dual economy?

A. It would. Some of that double handling expense would be taken care of. We have to have that now, due to our car space in Dallas.

Q. Well, now, go into that situation a little more fully.

A. In Dallas at our warehouse loading platforms, we have not sufficient room, and it is necessary to load approximately eight cars on the team track, which is across from the platform. We have to load it, spot it at our warehouse, then we load it on baggage trucks and truck it across during the day, double handling that tonnage for six to eight cars per day.

Q. And if you can take six to eight cars out of the ordinary loading at Dallas, that condition will be solved for the time being?

A. Yes, we can handle it otherwise.

Q. What is that added cost?

A. Very conservatively, $5.00 a day.

Q. That would go to offset your extra handling cost across the platform?

A. Yes, sir.

Q. What is the consideration for the purchase of the Fort Worth Warehouse & Storage Company franchise and other matters?

A. Twenty-five thousand dollars for the fourteen
1046 plates and records.

Q. In other words, you are buying all of his common carrier motor carrier operating rights?

A. That is right.

Q. And you are also getting traffic records and his good will, a going concern, value, and all that?

A. Yes, sir.

Q. Are you to receive the benefit of any agency arrangements which he may have at points which might be superior to ours?

A. We have that option.

Q. In other words, if he has agreed that any contracts he might have which are advantageous, those would inure to our benefit also?

A. Yes, sir.

Q. Although we are not obligated to take over any obligations of his?

A. No, sir.

Q. I think that is stipulated in the contract.

A. Yes, sir.

Q. How many trucks is he now authorized to operate? You say fourteen?

A. Fourteen.

Q. How many trucks do you contemplate you will have to use in conducting the business of the Fort Worth Warehouse & Storage Company, and for the coordinated
1047 handling of our own business?

A. Eight.

Q. I don't think I asked you that, as to Johnson. How many trucks do you figure we will need to do the job out there between Abilene and Big Spring?

A. Two, one emergency truck and one truck to operate daily.

Q. Now, your eight trucks, does that include a stand-by truck during normal times?

A. Yes, sir.

Q. For peak loads?

A. Yes, sir.

Chairman TERRELL: How many does Johnson run?

The WITNESS: Three.

Chairman TERRELL: Eight?

The WITNESS: No, three.

Chairman TERRELL: And you cut it down to two?

The WITNESS: Yes, sir; he has authority to run three. I am not in position to say what he runs, but I won't need but two operators.

Mr. LANCASTER: You estimate that on the basis of present volume of his traffic and our traffic?

A. That is right.

Q. You assume that we will get a fair share of the traffic, and by fair share I would say a majority of the traffic which is now handled by the Fort Worth Warehouse
1048 & Storage Company, and by Johnson over those routes?

A. I think we can safely say we would get a part of that tonnage.

Q. Well, a substantial part of it.

A. A very fair part of it.

Q. Now, that traffic, like our own traffic, will be handled so far as is economical by railway?

A. It will.

Q. It will still afford the same service?

A. Yes, sir.

Q. Now, at each of the towns on the routes of Johnson and Fort Worth Warehouse & Storage Company, does the applicant or its parent company have agents and station facilities?

A. We do.

Q. So that the freight can be unloaded at those towns as line haul goes through?

A. That is right.

Q. Do you know whether or not at the present time the freight that is handled into those towns by the Fort Worth Warehouse & Storage Company, and also by Johnson, whether they have any agents or storage facilities, or whether it has to be carried on through and later back hauled?

A. That is my understanding of that operation.

Q. With the result there is a delay to those shipments also?

A. Yes, sir.

1049 Mr. GROUCHY: Mr. Lancaster, you mentioned the parent company. What do you mean by parent company?

Mr. LANCASTER: I mean the Texas and Pacific Railway Company. I think he specified, if he did not, I want him to, that the applicant is wholly owned subsidiary of the parent company.

Mr. GROUCHY: Yes.

Q. (By Mr. LANCASTER) Mr. Huffman, are you familiar in a general way with the service which is now being offered in the territory involved by the two carriers we are proposing to acquire?

A. In a general way; yes, sir.

Q. Can you state whether or not the service which is afforded will be increased or diminished if operations are taken over by this applicant?

A. No, sir; it will not be diminished. In my opinion it will be increased to the extent of having houses at all these stations, warehouses.

Q. In point of time?

A. Yes, sir.

Q. And convenience to their patrons?

A. Yes, sir.

Q. Is it also true that the rail service to those towns will be substantially increased, and the mail service?

A. Yes, sir; it will be increased.

1050 Q. So there will be an increase in the value of the service in that it will be lesser in point of time, and there will be more facilities available upon consummation of this transaction than ever before?

A. Well, not only those stations, but further west. If you are setting out cars to reach their ultimate destination, you can set them out nearer on schedule.

Q. With the further possibility he may be able to operate further west in better time?

A. Yes, sir.

Q. The same is true with regard to eastbound trains which are incidentally affected by that?

A. Yes, sir.

Mr. GROUCHY: Mr. Huffman, The Texas and Pacific Transport Company do not have franchises over these routes?

The WITNESS: No, sir; not over the highways. We operate over the rail only. We do have a franchise from the State of Texas which was recently granted by the purchase of these contracts. The same is subject to approval of the I. C. C.

Q. The Texas and Pacific Motor Transport Company, until it commenced operations from Monahans to Lovington, was an organization that confined itself to L. C. L. handling of intrastate freight by rail; is that correct?

A. That is correct; specialized in merchandise freight.

Q. What was the instrumentality or the organization, through which the T. & P. Railway Company first afforded pick up and delivery service?

1051

A. The Texas and Pacific Transport Company.

Q. And as a matter of fact, as a matter of history, that was started approximately what year?

A. September, 1929.

Q. At first it was confined to intrastate traffic?

A. That is correct.

Q. It engaged in that service through the agency of independent contractors at the destinations?

A. For pick up and delivery service?

Q. Contracts which were made with the local draymen for the handling of this freight were amended to obligate the local draymen to also handle freight of the railway company when they started to afford that service?

A. That is correct.

Q. You have stated that the service available to the communities will be better than it has ever been heretofore. I want to ask you whether or not the rail service, the all rail service, will be improved.

A. It will.

Q. The local trains will be largely relieved of handling less than carload freight?

A. They will.

Q. Will that operate or not to expedite their handling of the carload freight?

1052

A. It will.

Q. Do you figure that will result in substantial economies?

A. It will.

Q. And expedited service?

A. Yes, sir.

Q. As heretofore stated, I think by you, if not by me, the maps attached to the applications show the other common

carrier motor carrier service along these routes, which we propose to acquire?

A. They do.

Q. Now, just state who those companies are and the character of their service.

A. The Merchants Fast Motor Line operates from Dallas to Big Spring, Texas; in fact, further west, but that is as far as I am interested in this application.

Q. The Merchants Fast Motor Line runs from Dallas over the entire route?

A. That is right, serving all the towns.

Q. On both applications, is that?

A. They serve both applications, going to Big Spring. The West Texas Transportation Company, formerly, which is now the Johnson Motor Lines, operates from Dallas to Abilene.

Q. And they will continue that operation after this acquisition, should it be accomplished?

1053 A. Oh, yes. And the Snyder Transfer Company, owned by Pete Bridgeman, operates from Abilene to Sweetwater. Now, the Gillete Motor Line operates interstate over from Dallas, the entire route, but I don't think through Breckenridge.

Q. Do you know whether or not there are other interstate operators out there?

A. Well, I am not so sure about the contract carriers. I know there is maybe a hundred special commodity carriers.

Q. Is there a concern known as the Jackson-Strickland Lines?

A. Yes, sir.

Q. Do you know whether or not they run over that route?

A. I am not so sure; I think they do, and there is one or two trips per week from San Angelo to Dallas. I am not so sure of their name, Tucker Truck Line, and Braswell Truck Line. There are several truck lines in there.

Q. Then there will be no point to which there will not be competition of two carriers if these acquisitions are approved?

A. Two or more carriers.

Q. I see, but no point at which there will not be two.

A. No.

Q. And at other points there will be more?

A. Yes, sir.

Q. Now, what is the fact about whether competition will be substantially unchanged owing to the fact that many towns, the railway has been unable to effectively compete?

1054 A. Well, I think we will continue to have strong competition.

Q. But I say, at points at which the railway has been unable to compete at the present time, there will be, in effect, merely a substitution of their competitor, rather than one less competitor.

A. That is right.

Q. So far as you know, has any organization, either other motor lines out there or any shippers, or any civic organizations, evidenced any opposition whatever to this application?

A. I know of none. There was not at the Texas Commission.

Q. But regardless of the appearances at any hearings, have you heard of any opposition?

A. No, sir; I have not.

Mr. LANCASTER: I think that is all.

Q. (By Mr. GROUCHY) Mr. Huffman, did I understand you to say the Johnson Lines would still operate?

A. Up as far as Abilene, from Dallas to Abilene. We just purchased that portion from Abilene to Big Spring. Would you mind my pointing it out on the map? The Johnson Motor Lines, we purchased this portion, the T. & P. did, from Abilene to Big Spring, but there is another portion that he will operate from Dallas right in here.

Q. You are not buying that?

A. No, sir; he will operate into Abilene between here and there.

Q. Now, as far as the Fort Worth Warehouse &
1055 Storage Company, will they continue to operate?

A. No, sir.

Q. They go out of business?

A. No, sir, they have no rights whatever. We are just taking over all their rights in the way of operation on the highways.

Q. (By Mr. YOUNG) Mr. Huffman, you only take over the certificate in so far as it concerns there cities on interstate traffic. The Fort Worth Warehouse & Storage Company does a storage business in Fort Worth, and you don't take over that business to their local customers at Fort Worth?

A. No, sir; the certificate on the highways only.

Q. That is the interstate stuff?

A. Yes, sir.

Q. And it is an all cash consideration?

A. Yes, sir.

Q. (By Mr. LANCASTER) Let me ask you on that point if you know whether the Fort Worth Warehouse & Storage Company also have what is known as a household corporation.

A. Yes, a special commodity carrier. They handle household goods. I don't know what it is or where to.

Q. That is not involved in this application?

A. No, sir, has nothing to do with the common carrier operation.

Mr. LANCASTER: I would like to interrupt Mr. Huffman here, to put on a witness from out of town who will take only five minutes.

1056 Chairman TERRELL: All right.

(Witness excused.)

Mr. PHINNEY: Mr. Chairman, while they are bringing the witness around, I would like to withdraw my appearance in this record.

Chairman TERRELL: All right, sir.

D. C. SANDERS, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) State your name, please.

A. D. C. Sanders.

Q. Your residence?

A. Fort Worth, Texas.

Q. With what concern are you connected?

A. I represent the Merchants Fast Motor Line, main office at Fort Worth, and I am their president.

Q. The Merchants Fast Motor Line operates over all of the routes of the two lines we are here seeking to acquire; is that correct?

A. Yes, sir; we operate from Dallas straight through to Odessa, which is beyond Big Spring.

Q. You then are familiar, from your own observation, with the territory involved, and the operating conditions?

A. Yes, sir; we have been operating that line for sixteen years.

1057 Q. In your judgment, Mr. Sanders, would you say that the fair value of the franchise of the Fort Worth Warehouse & Storage Company is $25,000.00?

A. I think so.

Q. Would you think that the operating rights of the Johnson Lines between Abilene and Big Spring, Texas, are worth $12,000.00?

A. I think so. I think it is a fair price, a very fair price.

Q. You are familiar with what would be the fair commercial value of these rights?

A. Well, we ought to be. We have been operating in there sixteen years. I know you couldn't buy our lines for anything like that.

Mr. LANCASTER: That is all; thank you.

Q. (By Mr. YOUNG) Mr. Sanders, you don't think the proposed sale and purchase here would prejudice the public interest in any way, do you?

A. I don't think so.

Q. Do you think it would prejudice competitive lines in any way?

A. I don't think so. I think it will help us.

Q. You don't think it will interfere with traffic any more than it has already been interferred with?

A. I don't think we will have as much traffic. We don't object to the purchase. We have been competing
1058 with the T. & P. for fifteen years. We feel we will get a competitor in here that will keep up the rates and obey the laws, and that is what we want. We lose more business to cut throat operators and people using subterfuges on rates, than to legitimate people, and as far as our line is concerned, if we have a competitor on a legitimate basis that takes our business away from us, they are welcome to it.

Q. It is not your purpose and intention in the statement you just made, to indicate to the Commission that the Fort Worth Warehouse & Storage Company has not been a legitimate competitor?

A. No. I say this, we have no fear of any legitimate operator on the line.

Q. (By Exam. CLIFFORD) Mr. Sanders, you testified that in your opinion, you think that $12,000.00 being paid for the permit between Big Spring and Abilene was a fair and just figure.

A. I think so.

Q. Are you acquainted with the facts relating to the purchase by Mr. Johnson of the Rose operation?

A. Yes, sir.

Q. Which I understand extended from Fort Worth or Dallas to Big Spring, Texas.

A. Yes, sir; I am.

Q. Do you know how much he paid for that?

A. I think he paid about $20,000.00, $22,000.00 maybe.

1059 Q. That included equipment, did it not?

A. Yes, sir.

Q. Do you know how much he paid for that permit?

A. I think he paid about seven or eight thousand dollars.

Q. Wasn't it $4350.00?

A. I don't remember just how he divided it.

Q. I think in that case that the price he paid for the permit alone was $4350.00. What do you think about that? Now, that was for the entire portion of the route from Fort Worth to Big Spring, a distance of approximately 400 miles, and in this proceeding the applicant is purchasing a portion of that route, say one-third of that route, and paying $12,000.00 for it. Can you give me any explanation of the difference in the figures?

A. Well, I think that proposition is a good deal like a piece of real estate. You are able to pick up real estate sometimes at forced sale, at a whole lot less than value. The value was in this line all the time, but the man who was operating it was not an operator and he could not operate his line and make any money, but that is not anything bad with the franchise. The value was out there and Bill Johnson just stole it for $12,000.00.

Q. You mean $4350.00.

A. Well, that is my opinion of it.

Q. Well, do you know whether or not this operation that had been formerly conducted by Mr. Rose was profitable one?

1060 A. Well, I know the way he was operating it.

Q. Well, I just want to get the basis for that figure, $12,000.00, being a reasonable price to be paid for this portion of the route.

A. Mr. Rose, in the first place, did not have capital to operate his line, and you operate a line over a distance of two or three hundred miles, you have got to have an organization and a set up and some capital. I have seen more truck operators in this state go broke because they have got out of the one and two truck class and got up to where they had to handle tonnage and keep records and get into a transportation system, and they did not have the finances or ability to operate them. The result was they went broke and lost money. I am satisfied Mr. Johnson was making money with it.

Q. I just wanted to get your reaction on that.

A. That is my thought about it. I may not be right about it. There is no way to say what a franchise in this state is worth, because there is not any figure ever put on them.

Mr. Grouchy: In the application, Mr. Examiner, the franchise, the certificate proper, is estimated at six thousand dollars.

Exam. CLIFFORD: Well, good will is also six thousand, which is the same thing.

Mr. GROUCHY: Mr. Sanders said he paid twenty
1061 thousand dollars didn't he?

Exam. CLIFFORD: No, he paid $20,000.00 for equipment and office furniture.

Mr. GROUCHY: I see.

Q. (By Exam. CLIFFORD) Coming back now to the consideration paid for the franchise to be acquired from the Fort Worth Warehouse & Storage Company. You testified that that is, in your opinion, also a reasonable figure.

A. Yes, sir.

Q. What is the basis for your figure there?

A. Well, you are getting into the heart of Texas, West Texas. It is the best part of West Texas, and you are going into a territory there that handles lots of freight, and you have got a good big town, 30,000 people in Abilene. You have a good many towns along the route. All of them are anywhere from two to five or six or eight thousand people, and the volume of tonnage that moves in there is what I base my idea of the franchise on. I know you couldn't buy the Merchants Fast Motor Line franchise between Dallas and Abilene, for $25,000.00.

Q. Would you pay that much for it?

A. I would not, because I have got one.

Q. If you did not have one, would you pay it?

A. If I wanted to go into the trucking business; yes, sir.

Q. (By Mr. YOUNG) Haven't those permits materially increased in value in the last ten years?

1062 A. It has increased in value, particularly in the last five years.

Q. And you have owned yours how long?

A. Sixteen years.

Q. And Johnson owned his how long?

A. About six months, I think.

Q. And Fort Worth Warehouse & Storage Company owned its franchise how long?

A. I think they came in under the grandfather clause.

Q. (By Mr. LANCASTER) The Federal Motor Carrier Act has added materially to the value, has it not, Mr. Sanders?

A. The only thing I see about it is this: the only thing about the franchises in the State of Texas, up until the I. C. C. was created to take over this new law, the franchise in Texas, it was questionable what the value would be, because they were operating under just a lease of life,

whatever the Legislature wanted to give them. If they wanted to take them away from you the next session of the Legislature, they could. Therefore, there was no particular thing you could set out as to value, because it was not a permanent proposition, but now, with Congress creating this Act, it really gives us something that is permanent, and I do not think any Texas Legislature, in the face of the Federal Act, can go in here and take away one of those permits. Therefore, I think it puts some value on them. That is my opinion on it. I know we have
1063 never set our permit up on our books as anything.

Q. (By Mr. GROUCHY) It did not cost you anything, did it?

A. Well, it cost us lots of money, yes, sir. Our permit cost us lots of money, because when we first started, those roads were all mud roads and we fought this mud and unpaved highways for years, and we have paid into the State and Federal Government in taxes, and annual fee of around twenty-five or twenty-six thousand dollars a year.

Q. Which will continue under the new operation?

A. Which will keep on continuing, and probably greater. It has cost us lots.

Q. I mean as a cash outlay. Of course, I understand the Texas & Pacific Transport Company, or you, you consider that reasonable value of your set up in the establishing—establishment, the privilege you now hold?

A. Yes, sir.

Mr. GROUCHY: That is all.

(Witness excused.)

T. E. HUFFMAN, recalled, testified further as follows:

Direct Examination (continued):

Q. (By Mr. LANCASTER) You stated, Mr. Huffman, the number of trucks you calculated you would have to have to operate under the franchise. Now, take the Fort Worth Warehouse & Storage Company and state what your
1064 total investment would be to start operations as outlined by you?

A. Around $17,000.00 for the trucks.

Mr. GROUCHY: Additional service?

The WITNESS: Yes, sir.

Exam. CLIFFORD: That is new equipment you are going to acquire?

The WITNESS: Yes, sir.

Q. (By Mr. LANCASTER) That would be a total of $42,000.00. Now, then, the Johnson line, you are paying

$12,000.00 for, you calculate you will need an investment of $4,000.00?

A. Yes, sir.

Q. Or a total investment of $16,000.00 for the Johnson Lines?

A. Yes, sir; that is correct.

Q. I want to ask you if you have prepared an exhibit, or a series of three exhibits, showing the carloading of l. c. l. freight cars from Dallas and Fort Worth for some representative period.

A. I have for the month of September, which is the last month available.

Q. What is the first of these sheets or exhibits?

A. It is the northbound l. c. l. tonnage in cars from Dallas and Fort Worth to points on the T. & P. Railway during the month of September, 1936. By northbound, I mean the T. C. Division, or around by Sherman.

Mr. LANCASTER: I should like to identify this as
1065 Applicant's Exhibit No. 1.

Q. Then your next one.

A. That will be eastbound tonnage in cars from Dallas and Fort Worth to points on the T. & P., its subsidiaries and connections, during the month of September, 1936.

Mr. LANCASTER: That will be Exhibit No. 2.

Q. Now, you have a third sheet.

A. Yes, sir. I have a third sheet which is westbound l. c. l. tonnage in cars from Dallas and Fort Worth to points on the T. & P. Railway, and subsidiary rails, during the month of September, 1936.

Mr. LANCASTER: That will be identified as Exhibit No. 3. Now, if the Board please, these exhibits are self-explanatory. They show the movements of the cars in pounds of l. c. l. freight, from Dallas and Fort Worth, during the month of September. We offer these in substantiation of the witness' statement as to the consolidation of freight into through cars.

Chairman TERRELL: They will be received and marked Exhibits 1, 2 and 3. Anything else?

(Exhibits 1 to 3, inclusive, Witness Huffman, received in evidence.)

Mr. LANCASTER: I think that is all for this witness.

Chairman TERRELL: Are there any more questions by anybody?

Exam. CLIFFORD: I would like to ask him to clarify a few points.

1066 Q. (By Exam. CLIFFORD) At the beginning of your testimony I think you stated you operated something like five hundred thousand truck miles.

A. Yes, sir.

Q. For what period?

A. That is for the year, from September, 1935.

Q. When did you begin operations, the Texas and Pacific Motor Transport Company, when did that company begin operations?

A. I can give you the exact date here. It is September, 1935, from Monahans to Lovington, and Marshall to Shreveport, September 27, 1935, and Shreveport to Cypress September 27, 1935.

Q. Does the Texas and Pacific Transport Company have on file with the Commission an application for a certificate under the grandfather clause?

Mr. LANCASTER: Not under the grandfather clause, but we have an application for authority to continue our operations from Monahans to Lovington, and we filed an application covering the operations from Shreveport to Cypress only. The first application was heard here in August, before Joint Board No. 33.

Exam. CLIFFORD: But you have no grandfather claims?

Mr. LANCASTER: No, sir.

Exam. CLIFFORD: How many trucks does the applicant operate at the present time?

The WITNESS: Ten under authority. We have one
1067 mail truck out between Monahans and Lubbock, but we do not have to have authority to do that.

Q. (By Exam. CLIFFORD) How many motor vehicles have you got handling freight?

A. Two.

Q. Do you know the authorized capital stock of the applicant?

A. Ten thousand dollars.

Q. Do you know how many shares?

A. It is all held by the T. & P. No, I don't.

Mr. LANCASTER: I will have another witness.

Exam. CLIFFORD: I would like to clarify that. There seems to be some ambiguity in the application as to the number of shares outstanding and issued.

Mr. LANCASTER: Yes, sir.

Q. (By Exam. CLIFFORD) Now, you are not operating over any parts of the routes that these applications cover, at the present time?

A. No, sir, except on the railroad; not on the highways.

Mr. Young: The railroad parallels the highway largely, doesn't it?

The Witness: Yes, sir, the railway and subsidiaries alongside the highways.

Q. (By Exam. Clifford) You are paying $12,000.00 for the Johnson route, and in addition you are going to invest $4,000.00 in new equipment for that portion of the route, aren't you?

1068 A. Yes, sir.

Q. That would make a total of $16,000.00 for that operation?

A. Yes, sir.

Q. And for the Warehouse operation you are paying $25,000.00 for the permit, for the operating rights, and something like $17,000.00 for eight new trucks you intend to operate in connection with that operation?

A. Yes, sir.

Q. Making a total of $42,000.00?

A. Yes, sir.

Q. All in all, it is a total outlay of $58,000.00. How do you propose to finance these acquisitions?

A. The money will be advanced by the T. & P. Railway Company.

Mr. Lancaster: In that connection, I might point out that the giving effect balance sheet attached to the Johnson application may be supplemented by another giving effect balance sheet, and that attached to the application of the Fort Worth Warehouse & Storage Company will be also supplemented as of another date, and it will indicate the money is to be advanced by the T. & P. Railway Company.

Q. Now, the Fort Worth Warehouse & Storage Company also operates a drayage service, doesn't it?

A. You mean locally, in the City of Fort Worth?

Q. Yes.

A. No properties in the city, or rights; neither am

1069 I acquiring their household rights. They household between certain points in big vans and they will continue that.

Q. Your company will have nothing to do with that?

A. No, sir.

Mr. Young: That is an irregular service, isn't it?

A. Oh, yes, it is irregular, that household handling will go to South Texas or North Texas, or maybe leaving the State, I am not sure, but we are just serving towns on our railroad, with merchandise in regular service.

Q. (By Exam. CLIFFORD) Do you know whether or not any interstate commerce is handled in connection with that permit that you are acquiring, by Mr. Johnson, at the present time?

A. Do I know that of my own knowledge?

Q. Yes.

A. No, I do not. It is my understanding there is, but the majority of it is intrastate.

Mr. LANCASTER: I think about 75-25 it would be.

The WITNESS: Mr. Johnson could clear that up for you, but I don't know of my own knowledge.

Exam. CLIFFORD: I think that is all.

(Witness excused.)

Mr. RAWLINGS: May I at this time enter my appearance for Mr. Johnson, the seller of that part of the certificate from Abilene to Big Spring, Frank H. Rawlings, Fair Building, Fort Worth, representing Mr. Johnson?

1070 Mr. LANCASTER: I will have Mr. Lallier.

A. L. LALLIER was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Lallier, where do you reside?

A. Dallas, Texas.

Q. With what company are you connected?

A. T. & P. Railway Company.

Q. In what capacity?

A. Chief Clerk to the Auditor.

Q. As such, do you have control over the books of that company and over the books of the subsidiary companies of that railway?

A. I do have general supervision over those books.

Q. Did you prepare the financial statements which are attached to the two applications involved here, which have been designated as MC-F-107 and MC-F-108?

A. They were prepared under my supervision.

Q. And from records under your supervision.

A. And from records under my supervision.

Q. Have you prepared some ancillary or supplemental statements?

A. I have.

Q. I will ask you first to identify and introduce the latest available income statements of the applicant, which is for the period for the first nine months of 1936, I believe.

1071 A. I have here a statement to be introduced, which is the income account, showing the results of the operation.

Q. I will ask you first for the income statement of the applicant for the first nine months of 1936, and also the general balance sheet, but I think they should be introduced separately.

A. This is the income statement of the applicant for the first nine months of 1936, showing a profit and loss amount in the lower portion—

Mr. LANCASTER: Just a minute now. Hand copies of this to the reporter and to the members of the Board. Now, I will ask you to distribute the general balance sheet and statement of the applicant as of September 30, 1936, and I ask that that be identified as Exhibit No. 5.

Q. (By Mr. LANCASTER) Mr. Lallier, have you compiled figures to enable you to give an operating statement of the truck operations of the applicant between Monahans, Texas, and Lovington, New Mexico?

A. I have.

Mr. LANCASTER: I will ask you to distribute that, and then I will have some questions to ask you. This will be Exhibit No. 6.

Q. Now, referring to the last statement, Mr. Lallier, Exhibit No. 6, the first figures there the total operating revenues are shown to be $56,023.00. How were those

1072 revenues arrived at?

A. That is arrived at on the basis of the revenue that would have accrued, that did accrue to the Texas New Mexican Railway Company, on the haul of this traffic up there that moved under billing of that road, that company, and in addition thereto the revenues accruing directly to the transport company of the traffic that moved under its own billing.

Q. Is the Texas New Mexican Railway Company a wholly owned subsidiary of the Texas & Pacific Railway Company?

A. It is.

Q. It operates from Monahans up to Lovington?

A. Operates the truck line.

Q. It operates a railway from Monahans to Lovington.

A. Oh, the Texas New Mexican? Yes.

Q. In that operation is a regularly established basis for division on a rail haul for freight moving via T & P to Monahans, thence via the T.N.M. to some point on its lines?

A. Yes, sir.

Q. And the revenue here is the revenue that would have accrued to the Texas New Mexican Railway Company had the freight moved all rail as it formerly did prior to the time it moved via the applicant?

A. That is right.

Q. Now, your operating expenses, those are actual figures assignable to the truck operations out there?

1073 A. They are actual operating expenses as accrued.

Q. Now, as I understand it, you have added a sum to those operating expenses, which is the estimated cost of the expenses which would have been incurred had that truck operation had to provide its sole agents and stations at the points along its lines.

A. There is an amount included in there, an estimate of that expense.

Q. The other expenses are actual?

A. The other expenses are actual.

Q. And you added in that expense because of the fact that actually the station facilities and agents of the Texas New Mexican Railway Company are used?

A. That is correct.

Q. And owing to the difficulty of allocation, you added to a direct operating cost, what it would have cost a truck line operating out there, to have equipped itself with stations and agents at each of the points?

A. Yes, sir.

Chairman TERRELL: We will take a recess until one o'clock.

(Whereupon at 12:00 M., a recess was taken until 1:00 P. M.)

1074 Afternoon Session 1:00 P. M.

A. L. LALLIER, recalled, testified further as follows:

Direct Examination (continued):

Mr. LANCASTER: We have identified and we wish to offer in evidence Exhibits Nos. 4 to 6.

Chairman TERRELL: They will be received.

(Exhibits 4 to 6, inclusive, Witness Lallier, received in evidence.)

Q. (By Mr. LANCASTER) Have you prepared, Mr. Lallier, a giving effect balance sheet in connection with the Fort Worth Warehouse & Storage Company application as of some recent date?

A. I have.

Q. I will ask you to distribute that, please, sir.

A. I have prepared that balance sheet as of September 30, 1936.

Mr. LANCASTER: This will be offered as Exhibit No. 7.

Chairman TERRELL: It will be received.

(Exhibit No. 7, Witness Lallier, received in evidence.)

Q. (By Mr. LANCASTER) Now, you also have one in connection with W. A. Johnson application, haven't you?

A. Yes, sir; that is also prepared as of September 30, 1936.

Mr. LANCASTER: This will be offered as Exhibit No. 8.

Chairman TERRELL: It will be received.

(Exhibit No. 8. Witness Lallier, received in evidence.)

1075 Q. Have you there, Mr. Lallier, an income account for the T & P Railway Company during the year 1935, and for some other period also?

A. I have here the income account of the T & P Railway Company for the year 1935, comparative with the year 1934, and for the nine months period of 1936 compared with the corresponding period of 1935.

Q. All right, sir. Please hand that around. The first one here is for the year 1935, compared with 1934. That will be offered as Exhibit No. 9.

Chairman TERRELL: It will be received.

(Exhibit No. 9, Witness Lallier, received in evidence.)

Q. Now, then, hand around the other.

A. I have another exhibit here for the 9 months of 1936.

Mr. LANCASTER: That will be offered as Exhibit No. 10.

Chairman TERRELL: It will be received.

(Exhibit No. 10, Witness Lallier, received in evidence.)

Q. Now, then, Mr. Lallier, you also have a balance sheet statement for the T. & P.

A. Yes, sir, I have here a balance sheet statement for the Texas & Pacific, containing the balance sheet as of December,—December 31, 1934, December 31, 1935, and September 30, 1936.

Mr. LANCASTER: That will be offered as Exhibit No. 11.

(Witness No. 11, Witness Lallier, received in evidence.)

Q. Mr. Lallier, all of these exhibits were prepared 1076 under your supervision and control, or by you yourself?

A. Yes, sir.

Q. They are true and correct, and they reflect the books of the two companies that they purport to cover?

A. Yes, sir.

Q. Now, refer, please, to your Exhibits Nos. 4 and 5. They covered the entire operations of the applicant?

A. Yes, sir.

Q. As distinguished from Exhibit No. 6, which exhibit shows the results of the truck operations from Monahans, Texas to Lovington, New Mexico?

A. Correct.

Q. From January 30th to September 1, 1936?

A. Yes, sir.

Q. Mr. LANCASTER: Now, if the Joint Board please, I am going to have Mr. Huffman, after this witness is through, to explain the history of all of the operations of the applicant here. If there should be any particular figures, however, about which you wish to ask this witness, I would like to have you ask him now if there are any questions as to them.

(By Exam. CLIFFORD) On your Exhibit No. 4, the income account of the T & P Motor Transport Company, you show an item of five hundred and eighteen thousand and some odd dollars for rail transportation privileges debit. What is the nature of that account?

1077 A. That is a payment made by the T & P Motor Transport Company to the rail lines for the service performed in carrying freight of the transport company.

Q. I didn't get that.

A. That is the payment made by the transport company to the rail lines for the service performed by the rail lines in handling the freight of the transport company over the rail lines.

Q. You say it is a payment made to the rail company. What is it doing up there in the operating revenue?

A. It is a charge-back against the gross revenues of the transport company. That is a debit item in that particular exhibit.

Exam. CLIFFORD: Well, I would like a more detailed explanation of that.

Mr. GROUCHY: You mean the transport company collects that freight and then pays it back to the railroad company?

The WITNESS: Yes, sir; they don't pay them all of it, but a proportion of it.

Mr. GROUCHY: That is paid, for instance, originating at Dallas, and going to another point, and the full freight bill including the rail transportation cost is included and collected by the transport company?

The WITNESS: Yes, sir.

Mr. GROUCHY: Therefore it is deducted and makes
1078 that difference.

Chairman TERRELL: Is all the freight collected by the transport company and paid back to the rail carriers, their proportionate part?

The Witness: Not all the freight that is shipped on the railroads.

Chairman TERRELL: I mean on the transport company.

The WITNESS: Only the freight that is handled by the transport company, freight of its own billing.

Chairman TERRELL: And collected by them, and a proportion is paid to the rail companies?

The WITNESS: Yes, sir.

Mr. LANCASTER: That is, for the rail haul?

The WITNESS: Yes, sir.

Mr. GROUCHY: So that total of $685,286.00 is not a transport company transportation. Included therein is the rail transportation up to the point the transport company takes charge of it and delivers it to the destination?

The WITNESS: Well, that is a revenue item, and that is the total revenue collected on all freight handled by the transport company.

Mr. GROUCHY: Yes, but that also includes the five hundred and eighteen thousand dollars?

The WITNESS: Yes, sir, payment to the rail lines.

Mr. GROUCHY: So that is not transportation carry-
1079 ing, then; it is transportation collecting for the traffic originated somewhere else and delivered by the transport company?

The WITNESS: Yes, sir.

Q. (By Exam. CLIFFORD) In other words, it does not reflect the motor carrier operations entirely?

A. It includes all the operations of the transport company.

Exam. CLIFFORD: That is not very clear, "Includes all the operations of the transport company." Isn't the only operation of the transport company a motor operation?

Mr. GROUCHY: Mr. Lallier, that one hundred and eighty-five thousand dollar net operating revenue represents what amount deducted from what amount?

The WITNESS: The one hundred and eighty-five thousand dollars is the net of all of the items in that particular group, the total of all the items in that particular group, less the $518,000.00.

Mr. GROUCHY: That is the only item deducted?

The WITNESS: That is the only item deducted. The rest of them are added.

Q. (By Exam. CLIFFORD) Now, the balance sheet statement, the same applies there, doesn't it? It includes both rail and motor operations?

A. Yes, sir; that is the company's balance sheet.

Q. Does it include any rail items at all?

A. I don't believe I clearly understand that question.

1080 Q. Does it include any rail items, railroads?

A. Do you have reference to the balance sheet?

Q. Yes.

A. It does not include any of the assets or liabilities of the railway lines; no, sir.

Q. Well, I think Mr. Lancaster is going to put a witness on here to state the history of this Texas & Pacific Motor Transport Company. I am still in a fog as to just what this actual operation consists of.

Mr. LANCASTER: If it is agreeable, then, I will put Mr. Huffman on right now.

Exam. CLIFFORD: That is all.

Mr. GROUCHY: I don't see why you put the transport privilege in operating revenues, and then you added in that $685,000.00, why it should appear in that column instead of under the operating expense.

The WITNESS: That is because we simply chose to set up the account that way, treating it as a deduction from the revenue rather than as an addition to the operating expense. It would mean the same thing where it shows in the next group of figures under operating expense.

Mr. GROUCHY: Well, when you reconcile the balance there it seems—it does mean that.

The WITNESS: If you want to put it that way: yes, sir.

(Witness excused.)

1081 T. E. HUFFMAN recalled, testified further as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Huffman, you have already testified that the transport company, the applicant here, operates trucks and has so operated them since some time in September, 1935.

A. That is correct.

Q. Now, what other operations have been engaged in by the transport company?

A. The T & P Motor Transport Company began its operations in September, 1929 over the rail lines of the T & P Railway Company.

Q. Handling what class of traffic?

A. Handling merchandise or l. c. l. shipments.

Q. In intrastate commerce?

A. In intrastate commerce. It began its operations under the authority of the Railroad Commission of Texas and the Louisiana Public Service Commission.

Q. At the time it started its operations, were any railroads affording any pick up and delivery service?

A. They were not.

Q. And the transport company undertook to handle the l. c. l. traffic of the T & P Railway Company and afford a pick-up service in connection with it, and assessing
1082 the standard rail rates; is that correct?

A. That is correct, except it handles its own traffic instead of the railway's traffic. It issued its own waybills, being a separate corporation, and being responsible for its own claims and so on.

Q. How about delivered traffic from the railroads?

A. The railroads at that time were not in the pick up and delivery service at all. It had only intrastate tonnage originating and destined to points on the T & P Railway.

Mr. YOUNG: From depot to depot.

The WITNESS: No, including—

Mr. YOUNG: I mean, before your transport company cut in?

The WITNESS: That is the railroad?

Mr. YOUNG: Yes.

The WITNESS: Yes, sir. Now, the T & P Motor Transport began furnishing store door pick ups and the store door delivery free at the rail rates in 1929, using the T & P Railway Company as a form of transportation, using T & P Railway agents, station facilities and so forth, for which it paid to the T & P Railway Company 72 per cent of its gross receipts on that class of traffic, l. c. l. shipments only.

Q. (By Mr. LANCASTER) And also 90 per cent of the profit?

A. Ninety per cent of the profit, if any.

Q. Now, as an illustration, we will assume there is a shipment to be made from Dallas to Fort Worth.
1083 The shipper at his option could call either the T & P Railway Company or the T & P Motor Transport Company?

A. That is right.

Q. If he called the T & P Motor Transport Company, a local drayman at Dallas would call at his door and pick up the goods?

A. A local drayman employed by the T & P Motor Transport Company, and issue a T & P Motor Transport bill of lading.

Q. Then in turn that drayman, as the agent of the T & P Motor Transport Company, would take the freight to the freight house and it would be put into a car operated by the T & P Railway Company?

A. Take it to the T & P Freight House.

Exam. CLIFFORD: The T & P Motor Transport Company did not operate any motor equipment?

The WITNESS: No, sir.

Q. (By Mr. LANCASTER) After that freight was handled over to Fort Worth, then a delivery would be made by whom?

A. By the T & P Motor Transport Company's drayman employed in the City of Fort Worth.

Q. Now, the local drayman was paid by the T & P Motor Transport Company?

A. Yes, sir; out of the 28 per cent.

Q. He was paid by the T & P Motor Transport Company out of the 28 per cent?

1084 A. Yes, sir.

Q. And the shipper paid the rail rate?

A. Depot to depot.

Q. To the T & P Motor Transport Company. The transport company's rates were identical with those of the T & P Railway Company?

A. Yes, sir.

Q. Except that it extended this added service?

A. Yes, sir.

Q. Now, the transport company paid to the railway company for the actual haul of the freight, 72 per cent of the gross revenue on that shipment?

A. That is correct.

Q. And then, at the end of every year, or every so often, they paid 90 per cent of their net profits?

A. That is correct.

Q. Is it a fact that those were the only operations of the T & P Motor Transport Company up to and including the time that it instituted this line haul truck operation from Monahans to Lovington and from Shreveport to Cypress?

A. That is correct.

Exam. CLIFFORD: Before we go any further, may I ask another question there? Just what was the reason for that novel setup? It appears to me this transport company at that time, not owning any equipment, I don't know
1085 whether it maintained any personnel, office equipment, or anything of that kind, but it appears to me to have been merely a skeleton corporation. Just what was the reason for handling traffic under the name of the transport company, when the railroad itself could do the same thing; couldn't it?

The WITNESS: Well, at that time it could not; it did not, at least, and we decided this would be the best way to handle the l. c. l., in that our tonnage, the T & P Railway tonnage, the majority of it, was intrastate Texas and intrastate Louisiana.

Exam. CLIFFORD: What I am trying to get at is this: in reality, though, that operation was a strictly rail operation, was it not?

The WITNESS: Yes, sir.

Exam. CLIFFORD: Up to that point?

The WITNESS: Yes, sir, I am going to lead up to that point—why we did this instead of the railway company. No railroad company, as such, in the United States, had any pick up or delivery service. We decided, the T & P Railway Company management decided there was a demand for pick up and delivery service. They were losing the l. c. l. merchandise to other forms of transportation. Our investigation showed the main reason was the public was demanding pick up and delivery, the other forms of transportation were charging the same rate as the railroad and furnishing that service. It was decided by the manage-
ment to meet that situation, to experiment with
1086 the thing, and we organized the T & P Transport Company to operate intrastate in Texas, and intrastate in Louisiana, and as such, the operation was approved by both State Commissions, Texas and Louisiana. We started to operate from Dallas and Fort Worth to thirteen stations where we maintained set out cars, furnishing store door delivery free at the railway rates. We kept that experiment in effect for quite a while and it proved successful, or attractive, and then we spread it to all stations on our railroad in Texas and Louisiana. It also spread to practically all other railroads in Texas, as such, as the T & P Motor Transport, and under the operation of the State Commission, rates, rules and regulations.

The truck lines, or the other forms of transportation, at the time we began operation were not regulated by any regulatory body as to weights, rates and so forth. We felt if we stayed in the merchandise business we must meet our competition in some way, and if we tried to do this pick up and delivery service with our railroad, we would no doubt meet with a lot of obligations that we probably would be a long time overcoming. It is something new.

Q. Let me ask you if they also felt a separate organization exclusively, working on less than carload freight, would be more advantageous than trying to turn the solicitation of their freight over to railroad men who for years had been interested in carload freight moving.

1087 A. That has some effect. It has this advantage: the railroad is so set up that it has got to pass through several heads before you get the right man to get the job done. In other words, the baby is dead before the doctor gets over there. You first have to handle with the train master, the agent, the superintendent and the general manager. That is a set up that can't be gotten away from. It has been that way for years, until now this motor transport had a central head something like the general manager of a railroad, and they don't have to go through all this rigamarole because you can go to the head man.

Another advantage was in the rate making. It looked like we were going to have to reduce our rates between certain points to meet certain conditions, and if you did that with the railroad there would be complaints filed on discrimination, that you didn't do it somewhere else, and you would ultimately lose more money than you would gain, but if you did it as an intrastate freight operation only,—we don't operate interstate except on our truck operations which we are proposing here now. We have regained a very satisfactory tonnage, and the public is pleased with it.

As has been ordered by the Railroad Commission of Texas, ordered some year or two ago, which we would like to furnish an opinion written by the Honorable Railroad Commission of Texas, as to a continuation of this

1088 Motor Transport, and demanding that the other railroads interchange with it.

Mr. LANCASTER: About two or three years ago there was an investigation made as to the operations of the transport company, not only ours but others which operated in this State, and they went into the operations and the methods of operation extensively, and there was a report on that which

was issued, which I don't have available here, but which I would like authority to file into the record if you think it is necessary.

Exam. CLIFFORD: Well, I don't think this is necessary. Coming back to your Exhibit No. 4, I think I see the light now. In other words, this exhibit showing the operating results for the period January 1st to September, 1936, in reality includes rail revenue, doesn't it?

The WITNESS: Yes, sir.

Exam. CLIFFORD: Intrastate pick up and delivery traffic?

The WITNESS: Yes, sir.

Exam. CLIFFORD: And in addition, the road haul revenue?

The WITNESS: Yes, sir.

Exam. CLIFFORD: Well, that is the whole story I wanted to get.

(Discussion off the record.)

Q. (By Mr. LANCASTER) When it was concluded to enter into truck operations, the transport company being already formed and organized, was the company which went into that, rather than organizing another subsidiary or
1089 creating a department of the railroad company to engage in those truck operations?

A. Yes, sir; we decided to use the machinery of the T & P Motor Transport. It was well advertised and had been in that game for a number of years.

Q. Now, there is one other point. You testified in connection with the Fort Worth Warehouse & Storage Company application that you were going to acquire eight trucks to handle that business?

A. Yes, sir.

Q. How many of those trucks will be operated between Dallas and Fort Worth under your plan?

A. Four.

Q. Four trucks?

A. Yes, sir.

Q. Instead of however many trucks are now being operated over that highway.

A. They have authority to operate twenty-eight.

Q. Of the trucks operating west of Fort Worth, how many do you plan to operate west from Fort Worth?

A. Three.

Q. From Fort Worth?

A. Yes, sir; two out of Fort Worth, and one from Abilene back, which will be three between Abilene and Fort Worth.

Q. Now, as to the condition of the highways in and around Dallas and Fort Worth, and between Dallas
1090 and Fort Worth and further west, I wish you would state what are the relative conditions, as to congestion, of those highways.

A. The last figures I saw on that, the Dallas-Fort Worth Pike is the heaviest congest and traveled highway in the State of Texas, and the State Commission has precluded any additional equipment from Mineral Wells east to Dallas. They won't grant any more permits on that business, on account of the road being congested.

Q. In other words, you will minimize the use of the highways as compared to what it is now?

A. Yes, sir.

Q. And you will also, particularly, minimize the use of the highways in the highly congested areas?

A. Yes, sir.

Mr. Grouchy: Mr. Huffman, do you say the Railroad Commission of Texas are not going to grant any more permits between Mineral Wells and Dallas?

The Witness: I can't say what they will do. Other applications have been filed. In their opinion they have handed down, they handed down written opinions and have denied some applications on the ground that the highway between Mineral Wells and east is congested and is carrying about all the traffic it will bear.

Q. Now, then, you said you were going to run a truck east from Abilene?

1091 A. Yes, sir.

Q. That truck will leave Abilene early every morning?

A. Yes, sir.

Q. At the present time is there any early morning service from Abilene east along the route?

A. If there is any, I don't know about it.

Q. Is there a considerable volume of freight which originates at Abilene to those points?

A. Well, Abilene is about 30,000 inhabitants, and it is quite a distributing center.

Q. That will be an added convenience to that town?

A. Yes, sir.

Mr. Lancaster: That is all.

Chairman Terrell: Any more questions? Stand aside.

(Witness excused.)

W. T. Long, Jr., was sworn and testified as follows:

Direct Examination:

Q. (By Mr. Lancaster) State your name?
A. W. T. Long, Jr.
Q. Your residence and occupation?
A. Dallas, Texas. I am superintendent of transportation of the T & P Railway.
Q. For how long have you held that or a similar position?
A. I have been in this position since March 1, 1929.
1092 Q. And prior to that?
A. I have been with the T & P Railway in the Operating Department, since March, 1918.
Q. Mr. Long, have you made or caused to be made under your supervision, a check as to the average time it takes a car of merchandise loaded in Dallas or Fort Worth, to carry the merchandise to destination and make a return trip for further loading?
A. I have.
Q. What is that average time?
A. A check of our records, including the time that the car must be assembled at the loading points, loaded, moved to the unloading points and released, will average four days per day.
Chairman Terrell: What distance are you talking about?
Mr. Lancaster: Those involved here, cars loaded with l.c.l. freight.
Chairman Terrell: What particular destinations?
Q. (By Mr. Lancaster) What destinations are those, to points on the T & P and connecting lines; is that correct?
A. Yes, sir.
Chairman Terrell: Over the entire system.
The Witness: No, twenty cars per day, an average which Mr. Huffman spoke of which we could expect to eliminate if this plan was made effective.
1093 Chairman Terrell: Well, I mean, your question was only directed to the destinations involved here, as I understand?
Mr. Lancaster: Yes, that is what I had in mind.
Chairman Terrell: Well, the way you put the question, it would appear as to all cars loaded.
Q. (By Mr. Lancaster) The average cars involved on the twenty car per day average which we may expect to eliminate is four days?

A. Four days per car.

Q. Approximately what is your cost of owning a car per day?

A. One dollar per day, the cost of ownership, per diem.

Q. That is the accepted cost all over the whole country?

A. Yes, sir.

Q. And the actual cost, even if you own your own car, will approximate that?

A. That is the accepted cost for all equipment.

Q. Assuming, Mr. Long, that you eliminate the switching and the loading of twenty cars per day at Dallas and Fort Worth, what terminal cost do you calculate to be saved?

A. In addition to the per diem on the twenty cars, $80.00 on eighty days, there are ten cars involved loaded at Dallas, all of which involve a movement over the Dallas Belt Line, of which we are a tenant of the T & N O and M-K-T, and our average payment per month is 7 cents per car. That would be $1.40 per day that we would make. At
1094 Dallas, our reports we keep up showing the cost of handling cars into the terminal, including the cars handled by the switch engine, shows 82 cents per car. That would be $8.22. At Fort Worth, the cost from the same report of cars handled, is 43.4 per car, or $4.34 per day. Those three items represent $93.96 per day.

Q. What other cost will you have in the handling of those twenty cars on trains to destinations?

A. The cars which it is proposed or figured that we would save from Dallas, would be cars destined to points in West Texas. Those cars, after being unloaded of merchandise at West Texas, must come, or do come back, empty, because there is no loading except possibly during one month a year. We must haul them back empty. The empty cost, figuring on handling an empty car, accepting the figure of the American Railway Association, Car Service Division, is 5 cents a mile for handling an empty car. That is the uniform charge made by one railroad against another railroad for handling empty equipment.

Q. What would be the aggregate mileage?

A. Those ten cars represent an empty mileage of 1,226 miles per day.

Q. Does that include your round trip out and back?

A. That includes only the empty movement, not the loaded.

Q. Well, it would be 2400 miles if you did not have to haul the cars out as well as back?

A. Yes, but I did not take into consideration the
1095 loaded mileage of the car. I figured the return empty that would be eliminated.

Q. You would also save those cars going out that would be also eliminated?

A. Sure, that is a fact, at 5 cents per mile, eliminating the loaded west on and the empty movement returning, would be the equivalent of $122.60 per day saving in empty mileage.

Q. That is just on the empty mileage?

A. Yes, sir. The saving would be pretty hard to figure, the increased efficiency in your operation instead of hauling these cars back empty. It would increase your net tons per train, that would eliminate the dead weight. Instead of handling six or ten empty cars back empty, you would have room for about five additional loads in the train.

Q. And those loads otherwise would probably have to be held back out there?

A. Probably dropped back from one train to the next. That would increase the net load of the train.

Q. Now, as to the cars that go east.

A. The cars that go east from Dallas, our saving in mileage would not result, because under our plan of operation these cars going east and going home east and must go back empty, because on our railroad we are what you call a railroad that consumes stock cars and commodities. We have more loads coming than we originate loads. Therefore, we utilize these cars going back, instead of haul-
1096 ing them back empty, we are now putting the merchandise in them, but that would eliminate the detention of the equipment.

Q. Now, on your west bound cars, is your traffic heaviest from east to west, or from west to east?

A. The preponderance of our traffic is east bound, so the saving of the cars from Dallas would eliminate the return movement of the empty cars in the preponderance of the traffic.

Q. Adding up all the figures which you mention there as being savings in cost, out of pocket cost,—as I understand you, that is the cost you are referring to in each instance?

A. Yes.

Q. What is the advantage you have there?

A. The mileage of the equipment at five cents per mile, plus the other items I have mentioned, $216.56 per day, but the five cent figure for hauling an empty car probably would not be all out of pocket. The detailed formula of that five cents, I don't know whether the car service division figured that was all out of pocket.

Q. Even allowing a substantial amount off from that figure, it would be conservative to say that the direct savings of those cars would be ninety-three dollars and some odd cents, plus some other substantial sum, probably at least forty or fifty dollars?

A. That is correct.

Q. Although you have no accurate figures on it
1097 because you have made no cost study.

A. No, I have not.

Q. Your switching cost there, that is an average of all cars in and out of the terminal?

A. All cars.

Q. Can you say whether or not that average cost would probably be lower or higher than the average cost we incurred in and out of the freight house?

A. That is lower.

Mr. LANCASTER: I think that is all.

Chairman TERRELL: Stand aside.

(Witness excused.)

L. C. ABBOTT was sworn and testified as follows:

Direct Examination:

Q. (By Mr. YOUNG) Your name is L. C. Abbott?

A. Yes, sir.

Q. Where do you live, Mr. Abbott?

A. Fort Worth.

Q. What is your business connection?

A. Warehousing and transportation.

Q. With what company?

A. Fort Worth Warehouse & Storage Company.

Q. How long have you been with that company?

A. Since 1919.

1097-A Q. What is your capacity, and what has been your capacity during that period with that company?

A. Vice-president and general manager.

Q. Your company is engaged—briefly state if you please, in what line of business.

A. General warehousing, storage of merchandise, household goods.

Q. You own a fire-proof warehouse over there?
A. Yes, sir.
Q. Go ahead.
A. Local cartage in and out of the warehouse, in and around town, and holding ourselves out to perform general cartage for any and everybody. In addition, we operate commodity service on removals of household goods to and from Fort Worth, within Texas only.
Q. What else?
A. A common carrier service between Dallas and Abilene.
Q. What is your certificate of convenience and necessity number?
A. 2125.
Q. That is proposed to be sold?
A. Contracted to be sold to the T. & P. Motor Transport Company.
Q. According to copy of the contract attached to this application?
A. Yes, sir.
1097B Q. That only is to be sold, together with good will and the terminal facilities, agencies and so forth?
A. That is all.
Q. No physical equipment?
A. No, sir.
Q. Your company, of course, expects to continue to operate its local cartage business and its warehouse and storage business?
A. We do.
Q. The line you speak of is the only line over which it operates as a common carrier motor carrier service?
A. That is right.
Q. The contract, copy of which is attached to the application, sets forth the true and correct terms of this proposed deal?
A. Yes, sir.
Q. You are still operating that common carrier motor carrier service over the route?
A. We are.
Q. And will continue to do so until this application is granted, or if it is not granted, you will continue to own it and operate it?
A. Yes, sir.
Q. Have you found it profitable, the operation of that line, Mr. Abbott?
A. Yes, sir.

1098 Q. You acquired that line before the present motor carrier common carrier law went into effect?

A. We did.

Q. There was no regulation then?

A. No, sir.

Q. Do you consider the price you are to receive under this contract the fair and reasonable price for your certificate?

A. It is.

Exam. CLIFFORD: What is the basis for your statement?

The WITNESS: There is a good deal to be taken into consideration in qualifying that, and since you have asked the question, I will answer it this way, I think. While the line has been a profitable one as shown by our reports filed at Austin each quarter, not in the sense of a large return, but commensurate with the volume of the business available to us, there has been a tendency within the last year or eighteen months on the part of other operators to extend their lines, a factor which we failed to take advantage of, not necessarily through a lack of foresight, as much as a lack of funds with which to bring about those facilities. We began to see our operations constricted or cut off at Abilene, which would bring about more of a nominal operation and preclude our handling through freight, into the Lubbock territory, or the San Angelo territory, both fruitful fields of operation. We used to get more through

1099 our connections at Abilene operating into the northwest and the southwest territories adjacent to Abilene. That has a greater bearing on our decision to deal with the T. & P. Transport Company than any other factor.

Q. In other words, the long lines are apparently becoming the more profitable and desirable?

A. It becomes necessary, for the reason that the same shippers are making shipments to the whole public. In Fort Worth and in Dallas, there is consideration given to congestion of the various pick up services. The trackage facilities are limited, and if my competitor can pick up to consignees beyond Abilene, they will give it to him to points this side of Abilene, and he is naturally glad to give it to him, and that naturally curtails our operation.

Q. Now, from an earning standpoint or capacity, do you take that into consideration in fixing the value of what you think is a reasonable fair value for the permit?

A. Yes, necessarily so.

Q. It has built up, I presume, plenty, almost since you acquired the right of privilege.

A. It has built steadily, taken through the years of the depression, there was a gradual depression, and within the last eighteen months there has been more than an ordinary gain in operations.

Q. It is still, now, going up?

1100 A. Yes, sir.

Q. You have statements made showing the earnings of this line that will be produced later?

A. They are submitted; yes, sir.

Mr. YOUNG: That is all.

Chairman TERRELL: Any questions by anybody. Stand aside. Who will you have next?

Exam. CLIFFORD: May I ask a question of the witness? What was the date of the incorporation, and in what state was your company incorporated?

The WITNESS: Incorporated in Texas in February, 1919.

(Witness excused.)

S. E. LINGO was sworn and testified as follows:

Direct Examination:

Q. (By Mr. YOUNG) Mr. Lingo, your initials are S. E.?

A. Yes, sir.

Q. Where do you live?

A. Fort Worth.

Q. What is your business?

A. Auditor, Fort Worth Warehouse & Storage Company.

Q. How long have you been with that company?

A. Six years.

Q. You are with that company now?

A. Yes, sir.

1101 Q. Do you have charge, supervision, of the accounting system and records and so forth?

A. Yes, sir.

Q. Do you make monthly statements, annual statements, and have monthly or annual audits made by outside companies?

A. Yes, sir.

Q. Have you recently made, over a series of months, a set up or financial statement or balance sheet of this company's operations, with reference to this motor carrier common carrier's permit?

A. I have.

Q. Have you those figures?

A. Yes, sir.

Q. Your corporation owns its own plant, buildings and land?

A. Yes, sir.

Q. Incorporated for one hundred and fourteen or a hundred and fifteen thousand dollars?

A. One hundred and fifteen thousand dollars.

Q. Under the laws of the State of Texas?

A. Yes, sir.

Mr. LANCASTER: At this time I would like to ask that Exhibits Nos. 1 to 11 be received in evidence.

Chairman TERRELL: They will be received and marked as designated when you were identifying them.

Mr. YOUNG: We will offer the common carrier operating report as Exhibit No. 12.

1102 (Exhibit No. 12, Witness Lingo, received in evidence.)

Mr. LANCASTER: This income statement will be Exhibit No. 13?

The WITNESS: Income and Expense Statement, 1934, and this is the balance sheet for 1934.

Mr. LANCASTER: Exhibit No. 14 is the balance sheet for 1934; is that correct?

The WITNESS: Yes, sir.

Chairman TERRELL: You keep your accounts segregated?

The WITNESS: Well, it is handled in conjunction with the rest of our business, and it has to be separated in order to show this report.

Mr. YOUNG: We offer Exhibits Nos. 13 and 14.

Chairman TERRELL: They will be received.

(Exhibits Nos. 13 and 14, Witness Lingo, received in evidence.)

Chairman TERRELL: So this shows the operating results of the operation being acquired by the T. & P. Motor Transport Line?

The WITNESS: That is right.

Chairman TERRELL: No. 13 is the income statement for the entire operation; is that it?

The WITNESS: That is right. Now, this is the common carrier report for 1935.

Mr. LANCASTER: That is Exhibit No. 15 you are

1103 offering now, which is the operating report for 1935.

The WITNESS: That is on the common carrier operation.

Mr. LANCASTER: Yes, sir.

Mr. YOUNG: We offer that.

Chairman TERRELL: It will be received.

(Exhibit No. 15, Witness Lingo, received in evidence.)

The WITNESS: And this is the income and expense for the Fort Worth Warehouse & Storage Company for the same year, 1935.

Mr. LANCASTER: Exhibit No. 16, then, is the income account for the entire business of the seller for the year 1935.

Mr. YOUNG: We offer that.

Chairman TERRELL: It will be received.

(Exhibit No. 16, Witness Lingo, received in evidence.)

The WITNESS: Here is the balance sheet for 1935.

Mr. LANCASTER: That will be Exhibit No. 17, 1935 balance sheet.

Mr. YOUNG: We offer that.

Chairman TERRELL: It will be received.

(Exhibit No. 17, Witness Lingo, received in evidence.)

The WITNESS: This is the common carrier motor carrier operating report up to November 1, 1936.

Mr. LANCASTER: That will be Exhibit No. 18.

Mr. YOUNG: We offer that.

Chairman TERRELL: It will be received.

(Exhibit No. 18, Witness Lingo, received in evidence.)

1104 The WITNESS: Income and expense statement up to September 30, 1936.

Mr. LANCASTER: This is the income and expense for the whole operations of the seller for 1936 up to date, and will be No. 19.

Mr. YOUNG: We offer that as Exhibit No. 19.

Chairman TERRELL: Received.

(Exhibit No. 19, Witness Lingo, received in evidence.)

Mr. LANCASTER: And the next exhibit, No. 20, is the balance sheet as of September 30, 1936, of the seller.

The WITNESS: Yes, sir.

Mr. YOUNG: We offer that.

Chairman TERRELL: It will be received.

(Exhibit No. 20, Witness Lingo, received in evidence.)

Q. (By Mr. YOUNG) Those records, Mr. Lingo, were made by you, or under your supervision?

A. Yes, sir.

Q. From the records and books of the company?

A. Yes, sir.

Q. In the office there?

A. Yes, sir.

Q. Are they true and correct?

A. Yes, sir.

Q. That is all.

Mr. GROUCHY: Mr. Lingo, just in casually looking
1105 over that, how do you include the pro rata of rate, if any, for the motor carrier operation?

The WITNESS: That is based on—

Mr. GROUCHY: Does it appear in this, any figures on taxes or anything?

Exam. CLIFFORD: What exhibit is that?

Mr. GROUCHY: That is 18, in his expenses.

The WITNESS: You have the common carrier report?

Mr. GROUCHY: Yes.

The WITNESS: That is included in the terminal expense.

Mr. GROUCHY: That is your own distribution or allocation, as you feel reasonable?

The WITNESS: Yes, sir.

Chairman TERRELL: Any more questions? Stand aside. (Witness excused.)

W. A. JOHNSON was sworn and testified as follows:

Direct Examination:

Q. (By Mr. RAWLINGS) State your initials and name, Mr. Johnson.

A. W. A. Johnson.

Q. Where do you live, Mr. Johnson?

A. Fort Worth, Texas.

Q. What business are you engaged in?

A. Motor transportation.

Q. What is the nature of the organization?

1106 A. W. A. Johnson, doing business as Johnson Motor Lines.

Q. You are the sole owner of it?

A. Yes, sir.

Q. Mr. Johnson, where do you operate generally?

A. In Texas and Oklahoma.

Q. Where are your Texas headquarters?

A. Fort Worth.

Q. In what direction and into what trade territory, generally, do you operate from Dallas and Fort Worth?

A. West and southwest and north.

Q. You mean north into Texas or some other state?

A. North, we have three separate lines out of Texas into Oklahoma.

Q. Into what trade territory in Texas do you operate into?

A. In West Texas and Southwest Texas.

Q. Will you give us generally the route covered in West Texas by your operation?

A. From Dallas and Fort Worth, Abilene, and to Big Spring, and from Abilene into San Angelo.

Q. The operation from Dallas to Fort Worth west to Big Spring, and west to San Angelo, is carried on under what certificate?

A. Well, this one I just mentioned is under the Carl Rose certificate. I don't remember the number.

Q. Is that the certificate you have recently purchased from Carl Rose?

1107 A. Yes, sir.

Q. In what name did he do business?

A. West Texas Transportation Company.

Q. And the route you described from Dallas west to Big Spring and San Angelo is operated under that certificate?

A. Yes, sir.

Mr. GROUCHY: Mr. Johnson, you don't operate from Fort Worth to Abilene under your own certificate?

The WITNESS: Yes, sir, around through Coleman, another route.

Mr. GROUCHY: Not paralleling this road, this railroad?

The WITNESS: Well, I will continue to operate to Abilene. I did not release this end of it.

Mr. GROUCHY: I know, but you do operate not?

The WITNESS: Yes, sir, and I have another route into Southwest Texas, that comes across from Coleman into Abilene.

Mr. GROUCHY: Yes, sir, I see. You retained that.

The WITNESS: Yes, sir.

Mr. RAWLINGS: If the Board please, I would like to, by reference, incorporate Mr. Johnson's testimony that was given in Docket 106, which is the application to acquire the Rose Line by Mr. Johnson, which we heard yesterday, a complete description of his operations and the routes and so forth is contained in that docket number, and it might save considerable time to have it incorporated into

1108 this docket, if it is agreeable with the Board.

Chairman TERRELL: If there is no objection it will be incorporated.

Mr. GROUCHY: What route is that? The Rose?

The WITNESS: Carl Rose route.

Mr. RAWLINGS: I assume then, that the testimony in Docket 106 will be incorporated into this docket?

Chairman TERRELL: Yes.

Q. (By Mr. RAWLINGS) Now, Mr. Johnson, state whether or not the Carl Rose operation was acquired by one certificate when you acquired it.

A. It was; yes.

Q. Do you know the number of it?

A. No, sir.

Q. State whether or not that certificate includes a part of the operation west from Abilene to Big Spring.

A. It did.

Q. What action, if any, have you taken with the Commission, the Railroad Commission of Texas, with reference to that certificate since you purchased it?

A. We filed an application for the certificate to be divided into two parts, setting aside this spur out to Big Springs, issuing a separate certificate on each part of the line.

Q. With whom did you file that application?

A. With the Railroad Commission of Texas.

1109 Q. Has any action been taken?

A. Yes, sir; they have approved it.

Q. What did they do?

A. They issued a new certificate for the portion of the line, as well as the other portion of it also.

Q. When you say "the portion," what do you mean?

A. From Abilene to Big Spring.

Q. As I understand your testimony, the Commission divided the certificate and issued a new certificate assigning a new number, evidencing that portion of the operation from Abilene west to Big Spring.

A. Correct.

Q. Is that the part you contracted to sell to the T. & P. Motor Transport Company?

A. Yes, sir.

Mr. GROUCHY: They canceled that spur from Abilene to Big Spring on the other certificate?

The WITNESS: Yes, sir; they just issued two new certificates, dividing it.

Mr. GROUCHY: Eliminating the Rose from that privilege?

The WITNESS: Yes sir.

Mr. GROUCHY: So that the Rose Company, having sold to you, you are selling to these other people, and they will have no interest from Abilene to Big Spring?

The WITNESS: Rose is completely out of all of it.

1110 Q. (By Mr. RAWLINGS) What happened to that part of the operation from Abilene to Big Spring?

A. I have contracted to sell it to the T. & P. Motor Transport Company.

Q. I am talking about from Abilene to San Angelo.

A. I retained that.

Q. And the other part of the certificate from Abilene west to Big Spring?

A. That is what I contracted to sell to the T. & P. Motor Transport.

Q. Now, from Dallas to Abilene.

A. I propose to retain that.

Q. In other words, you are retaining all of the Rose operation except Abilene west to Big Spring?

A. Correct.

Q. Did you hear the testimony here this morning, Mr. Johnson as to the service proposed by the T. & P. Railway —T. & P. Motor Transport, if this transaction is approved by the I. C. C.?

A. Yes, sir.

Q. Do you know of any reason why the service will be impaired or diminished from Abilene to Big Spring by reason of this sale?

A. No, sir; it should be improved.

Q. What is the consideration for the sale of the Abilene to Big Spring part of this operation?

1111 A. $12,000.00.

Q. Cash consideration?

A. Yes, sir.

Q. Subject to the approval of the Interstate Commerce Commission?

A. That is correct.

Q. You regard that as a reasonable and fair value for that certificate?

A. I do.

Q. Any other property or assets sold besides the operating rights?

A. Good will, and three common carrier tags to go with it.

Q. You say "common carrier tags;" what do you mean by that?

A. Issued by the Railroad Commission, authorizing us to operate a truck over the highway.

Q. Are they required, before you can operate a truck?

A. Yes, sir.

Q. They evidence the operating rights?

A. That is right.

Exam. CLIFFORD: Those tags, are they considered physical property, or do they come with the permit?

Mr. RAWLINGS: They come with the permit, but you must have them before you can put the truck on the highway.

Q. (By Exam. CLIFFORD) In reality, it is a part of the permit itself?

1112 A. Yes, sir.

Mr. RAWLINGS: No, it goes more with the equipment than the permit.

Exam. CLIFFORD: Is there a separate value attached to those tags?

Mr. RAWLINGS: Yes, sir.

Exam. CLIFFORD: Don't you have to pay so much every year to the State?

The WITNESS: Yes, sir.

Exam. CLIFFORD: Is that what it is?

Mr. RAWLINGS: Yes, sir; it is a yearly identification plate.

Exam. CLIFFORD: What is the cost of those?

Mr. RAWLINGS: Ten dollars.

Exam. CLIFFORD: And how many plates?

The WITNESS: Three.

Chairman TERRELL: It is not so much the price, not so much the intrinsic value.

Exam. CLIFFORD: In reality, though, shouldn't it be included in the privilege of franchise?

Mr. RAWLINGS: Yes, I think so.

Chairman TERRELL: If you have twenty plates, it is a good bit more difficult to get twenty-two.

Exam. CLIFFORD: I had an idea you—it was something you have to pay the State extra for. The plates

1113 don't come with the franchise?

Mr. RAWLINGS: No, sir.

Exam. CLIFFORD: You must make application with the State and pay a certain fee for that?

Mr. RAWLINGS: That is true.

Exam. CLIFFORD: So if you had fifty trucks at $10.00, that would be $500.00 you had to pay the state that could not be included in the item of franchise.

(Discussion off the record.)

The WITNESS: May I explain it this way? If I had more business than I could handle now with the number of plates I have, to get additional plates I would have to file application with the Commission, and they would have to have a hearing, and maybe I would have protestants not wanting me to have any more equipment on the highways, and at that I couldn't get them.

Q. (By Mr. RAWLINGS) It is equivalent to showing necessity and convenience to get a plate to operate in Texas.

A. Yes, so that makes them very, very valuable. I have known people to buy some little insignificant permit in order to get four or five plates. That is, I thought that was what it was for.

Q. Mr. Johnson, do you regard the consideration to be paid to you for this franchise and the other rights to go with it as a fair and reasonable value?

1114 A. I do.

Q. Do you have any statements there, or reports, showing the comparative tonnage that has moved over the Rose Line in the last few years?

A. Yes, sir; I have a copy of the report that he made to the Railroad Commission, Carl Rose.

Q. Covering what period?

A. The first one is dated June 30, 1934.

Q. Are those certified to by the Railroad Commission?

A. They are not certified to, but I happen to know they are exact copies.

Mr. RAWLINGS: I will make this statement preparatory to offering them in evidence. I personally called the man in charge and requested those statements. They came through, but they are not certified to, but they came from the Railroad Commission. If there is no objection to them we want to offer them in evidence.

Mr. GROUCHY: They did not appear in the other case?

Mr. RAWLINGS: No, they did not. They were not available then.

Q. (By Mr. RAWLINGS:) Take the first statement there and have it marked by the reporter for identification.

A. This first one covers the months of April, May and June, 1934.

Mr. GROUCHY: May we understand that we will get

1115 certified copies to these later?

Exam. CLIFFORD: I think we should.

Chairman TERRELL: Well, what is the use of introducing them now?

Q. (By Mr. RAWLINGS:) Do you have any documents or information before you that will give the Board some idea of the tonnage handled over the Rose Line?

A. Yes, sir.

Q. What period does that cover?

A. April, May and June, 1934.

Q. Does it have any information there as to the amount of tonnage handled by the Rose operations?

A. Yes, sir.

Q. What does it show?

A. For those three months, 690,273 pounds.

Q. Is there any allocation as to the part of the line being sold?

A. That is the entire line.

Q. What is your next statement?

A. The next one is dated September 30th.

Q. Purporting to cover what period?

A. July, August and September, 1934.

Q. What is the tonnage?

A. 64,934 pounds.

Q. And the next.

1116 A. The next statement is December, 1934, for the three previous months. That shows 873,426 pounds. The next is March 31, 1935 for the three previous months and shows a tonnage, 1,494,175 pounds. June 30, 1935 for the three previous months show 1,416,000. September, 1935 for the three previous months shows 2,114,880 pounds. December 31, 1935, for the three previous months, shows 3,150,000 pounds. In March, 1936, for the three previous months, it shows 3,816,000 pounds. Now, I don't have any later statements. There should be one for July.

Mr. GROUCHY: There is no segregation there of the loop between Abilene and Big Spring, and the only object of that, is that it is a gradual increase of business?

Mr. RAWLINGS: The object is to show the value of this certificate.

The WITNESS: In July, 1935, for this portion of the line from Abilene to Big Spring, the tonnage handled was 140,993 pounds. In July, 1936, for the same portion of the line, 233, 973 pounds, better than double.

Q. (By Mr. RAWLINGS) Do you know whether or not there has been an increase in tonnage, similar increase, since July, the date of your last report there?

A. Well, I haven't got all of the entire line. I just happened to be in San Angelo two weeks ago, checking up with my agent, and he showed a 76 per cent increase for

1117 the three months that we have operated; that is, July, August and September, and that just runs about right all over the line, from 60 to 70 per cent increase since July 1st, since we have taken over the operation.

Mr. GROUCHY: You have been operating since July?

The WITNESS: Yes, sir.

Mr. GROUCHY: Prior to the approval of the purchase by the Commission.

The WITNESS: Since the approval of the Railroad Commission of Texas; yes, sir.

Mr. GROUCHY: I understand you have just completed the purchase of that yesterday?

The WITNESS: We just had the hearing before the Interstate Commerce Commission yesterday.

Q. (By Mr. RAWLINGS) Mr. Johnson, do those statements to which you referred show the net earnings of Mr. Rose during the year 1935, in the operation of this line?

A. Yes, sir.

Exam. CLIFFORD: That is for the whole operation?

The WITNESS: This is for the whole operation.

Mr. GROUCHY: Will you have a certified copy of that?

The WITNESS: June 30th, for the three previous months, he shows a net profit of $904.04.

Q. (By Mr. RAWLINGS) Give us the year 1935.

A. March 31st, for the three previous months, $955.26.

Exam. CLIFFORD: Is that net now?

1118 The WITNESS: Yes, sir. June 30th, three previous months, $1,715.84. September 30th, for the three previous months, $1,901.48 December 31, 1935, $2,222.02.

Mr. RAWLINGS: As I understand, the Board wants us to file certified copies of these reports to which we referred and we will secure certified copies from the Railroad Commission of Texas and file them with the Commission.

Mr. GROUCHY: This increase of 70 per cent, was that over the entire line?

The WITNESS: Both I gave you. Over this portion of the line they doubled it in 1935, but it was not during the time I operated it. Now, the tonnage would be easy for me to get, but the revenue, for instance, I had a shipment out of Oklahoma City going to Abilene, I would have to prorate all of that to see what that portion of the line earned.

Exam. CLIFFORD: Suppose you furnish a statement showing the revenues for Mr. Johnson's entire operation, and also another statement covering a portion of the Rose operation that you are selling to the T & P. Motor Freight Line. Can you furnish that?

The WITNESS: It would be quite a job. We can furnish it.

Mr. RAWLINGS: We can do this, if it would be satisfactory, we can furnish you the tonnage moving over this division from Abilene to Big Spring. We can give you the

1119 average revenue for our tonnage, which will apply to this operation as well as the other. We know what our average revenue per hundred pounds is.

Exam. CLIFFORD: You mean that average will cover the entire Johnson operation?

Mr. RAWLINGS: Well, that wouldn't be very helpful in determining the value of this particular segment of the Rose operation.

(Discussion off the record.)

Mr. RAWLINGS: We will endeavor to furnish the income statement of Carl Rose covering the years 1934 and 1935 and part of the year 1936. We understand that information will be available from reports filed with the Railroad Commission of Texas.

The WITNESS: That is all we can furnish. Now, here is something I can give you. I can give you this.

(Discussion off the record.)

The WITNESS: In April, 1935, the total tonnage for the portion of the line, Abilene west to Big Spring, 121,273 pounds, total revenue for the handling of this tonnage was $296.92.

Mr. LANCASTER: How do you allocate that part of the total revenue? Is it on a mileage basis?

The WITNESS: That man prorated to show what
1120 that part of the line earned.

Mr. LANCASTER: On a mileage basis?

The WITNESS: On the mileage basis.

Mr. LANCASTER: In other words, a shipment that moved from Abilene to Shreveport, and you took it for part of the way, from Dallas to Abilene, you have excluded that part of it?

The WITNESS: That is right. In July, 1935, the total tonnage for that part of the line was 140,893 pounds, and revenue $333.53. In August, 1935, the tonnage was 177,696 pounds and revenue $408.06.

Exam. CLIFFORD: We are going to get that information, aren't we, from Carl Rose?

The WITNESS: No, sir, he doesn't have it segregated.

Exam. CLIFFORD: Didn't you indicate a while ago that Mr. Rose' records were available for 1934 and 1935?

The WITNESS: For the entire line.

Mr. RAWLINGS: That was the income statement for those years for the entire line. He is giving the segregations for this division.

Exam CLIFFORD: What I am after now is just what you have been doing since you have taken over this line for July, August and September.

The WITNESS: Well, I am getting down to that.

Exam. CLIFFORD: Well, you are reading off June, 1935, figures. I am wondering how they are applicable here?

1121 (Discussion off the record.)

Q. (By Mr. LANCASTER) What can you give for this portion of the line, from your records that you keep, since you have taken it over?

A. The tonnage for July was—

Q. What can you furnish? You can furnish the tonnage for this portion of the line?

A. Yes, sir; like this: I don't mean to be contrary. I can get every piece if I spend enough money to get it. In other words, if I go and pick out every bill on this line I can get it to a gnat's heel, for the entire operation, but it would be quite expensive. We probably have two thousand waybills a day, and we probably would have to go through each one of those to see what went on this part of the line.

(Discussion off the record.)

The WITNESS: I can give you the tonnage. The revenue has not been prorated down to that portion of the line, but the tonnage is carried for the two months, and that is accurate.

Mr. GROUCHY: From Abilene to Big Spring?

The WITNESS: No, sir; the revenue was, but the tonnage is accurate, on what was handled on that portion of the line.

Chairman TERRELL: All right, read it into the record.

The WITNESS: For July the tonnage handled between Abilene and Big Spring was 233,973 pounds.

1122 Mr. LANCASTER: That is 1936?

The WITNESS: 1936, October, 1936, 228,871 pounds. Now, to get the exact revenue for that, all I have to do is prorate these bills out, which we did not have time to do.

Mr. GROUCHY: July was 216,000?

The WITNESS: July was 233,000, and October was 228,000.

Exam. CLIFFORD: How about making that into an exhibit, Mr. Rawlings?

Mr. RAWLINGS: We will make you an exhibit showing the tonnage handled between Abilene and Big Spring for the month of July, 1936, and the month of October, 1936, and the revenue derived for handling that tonnage, and we expect to furnish the operating and income statements of Carl Rose for the years 1934 and 1935, and part of the year 936, as that information is available from reports filed with the Railroad Commission.

Chairman TERRELL: You can furnish that within fifteen days.

Q. (By Mr. LANCASTER) Mr. Johnson, so far as you know, is there any other information, other than the income report filed at Austin by Carl Rose, which would show anything about his operations prior to the time you took it over?

A. Well, in this manner: it will show what his gross was, but won't show what he did with his money.

Q. But that is the only source of information available to you or the applicant?

1123 A. Yes, sir.

Q. There is another truck line, or several truck lines operating between Abilene and Big Spring?

A. Yes, sir.

Q. Name them, will you?

A. Merchants Fast Motor Line, Gillette Motor Transport Company.

Exam. CLIFFORD: That is already in the record.

Mr. RAWLINGS: I believe that is all, unless the Board or the Examiner cares to ask Mr. Johnson some questions.

Chairman TERRELL: All right. Any more testimony?

Mr. LANCASTER: I would like to put Mr. Huffman on for one question.

Exam. CLIFFORD: Just a minute, Mr. Johnson. I have a question.

Q. (By Exam. CLIFFORD) The question I have is this, Mr. Johnson. I understand that in this application, in this transaction, you are to receive as consideration for the sale of a portion of this permit between Abilene and Big Spring, $12,000.00.

A. That is correct.

Q. Now, in a previous, or in another application filed by you with the Interstate Commerce Commission, seeking authority to purchase the property and permits of Carl Rose, the permit in that case, as I understand it, is valued at $4,350.00. Is that correct.

1124 A. That is right.

Q. And that permit covered the entire portion, the entire operation of the Carl Rose Line from Dallas to Big Spring, did it not?

A. Yes, sir.

Q. And in this application you are to receive the sum of $12,000.00 for the portion or segment between Abilene and Big Spring, which constitutes approximately one-third of that route, does it not?

A. That is right.

Q. Can you state for the record why, in your opinion, you think this $12,000.00 is a fair price for that franchise, considering that in this other transaction you paid only $4350.00 for a permit covering two-thirds again as much territory, and also in addition, in that transaction you acquired quite a great deal of physical property?

A. I would like to start at the beginning, your Honor, and go right on down the line as to why this line was there.

Q. Well, I just want to know, just give me a short, brief, concise statement as to why, in your opinion, you think $12,000.00 is a fair price for this operating right on this portion of this permit, when you paid only $4350.00 for the permit covering the entire Rose operation.

A. Well, as Mr. Sanders said this morning, I almost stole it. But I would like to explain it in this manner. In
1125 December, 1934, from the reports which Rose showed, he handled 600,000 tons over that entire line. He had no office set up. He was inexperienced in common carrier operations and he was just about to go out. He came to me and wanted to know if I would handle his pick ups and deliveries, billings, abstract and all, in Dallas, Fort Worth, Abilene and San Angelo. I already had the set up in those four towns. I told him under certain conditions I would. He wanted to know what those conditions were, and I told him what percentage of the total revenue I had to have in order to perform that service for him, which was on shipments that were picked up and delivered by the Johnso Motor Lines we were to receive 30 per cent of the gross revenue. I will illustrate it in this manner: a shipment picked up at Dallas and delivered at San Angelo, I was to get 30 per cent of the revenue, also with the provision that if—he first wanted to sell it to me, and I did not particularly want to buy it,—but with this provision, that if I took a notion to buy that line within two years, that I could purchase it for the permit alone, for $4350.00. If I was to take this business over and handle it for him, that was a provision, and it was also agreed I was to pay the market value for what he might have in case this purchase was made.

All right. I got hold of it and you can see the increase I made. In other words, I made the line valuable and
1126 did not let him get away with that option; I took it up.

Mr. GROUCHY: You paid him for his equipment?

The WITNESS: I still owe him some for his equipment.

Mr. GROUCHY: You obligated yourself to buy his equipment?

The WITNESS: Yes, sir.

Mr. LANCASTER: In other words, you exercised an option you had held for two years?

The WITNESS: That is right. It would have run out this December, and he had been offered more money, but he couldn't sell because I held the option.

(Discussion off the record.)

Chairman TERRELL: All right. Is there anything else?

(Witness excused.)

T. E. HUFFMAN, recalled, testified further as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Are you going to buy new equipment with which to conduct this operation?

A. We are.

Q. Are you going to have safety appliances prescribed by the Commissions in such size and shape as they may be required?

A. I think we will even go further than they require, in placing safety measures and devices on the equipment.

Q. Are the results of your truck operations be-
1127 tween Monahans and Lovington, favorable?

A. They are.

Q. I want to ask you if your operations under these acquisitions would be equally favorable?

A. Yes.

Mr. LANCASTER: I think that is all. I want to state this for the record. In accordance with our contract with Mr. Johnson, which calls for him being paid the full purchase upon approval by the Railroad Commission of Texas, that sum has been passed to Mr. Johnson, the time being about three weeks ago. Under our contract we have not yet acquired any control over his operations, and they will continue to be under his operation, and a competitive operation, even though the full purchase price has passed. Our contract provides further that if this application should not be approved by the Federal authorities, that he will pay back the $12,000.00. That is a point I thought we ought to bring out here, so that there won't be any idea we had already tried to do the whole thing, and the whole thing would be a sham.

Exam. CLIFFORD: Well, Mr. Lancaster, what was the reason for paying this off and not taking over the control of the line?

Mr. LANCASTER: The reason was, we could not trade with Mr. Johnson on any other basis, and his underlying basis was that he figured he could get the approval of the
1128 Commission at Washington within a reasonably

short while. The approval by the Federal authorities was of uncertain time, and he had some obligations which were about to become due within a short period of time, and he wanted some assurance that he would have his money. Now, if we had known that we would have a hearing this morning, I think we could have postponed it. At that time we knew other carriers had applications on file for almost a year and had never had hearings on them, and the actual disposition of them was so uncertain, he was unwilling to take that risk.

Exam. CLIFFORD: I think you have been misinformed as to that. I believe every application that has been filed so far with the Section of the Finance Bureau by the motor carriers has been set for hearing promptly.

Mr. LANCASTER: They have been expedited, but we could not hardly convince Mr. Johnson of that.

Exam. CLIFFORD: I do not think you can specify one instance where an application has not been heard within a period of a year.

Mr. LANCASTER: Well, don't misunderstand me about it. I say that was in his mind, that he did not want to take the hazard on that.

Exam. CLIFFORD: I just wanted to correct you on that statement you made there.

Mr. LANCASTER: Well, I did not refer to the finance
1129 applications, or anything of the sort, but I meant the applications on file.

Exam. CLIFFORD: Well, it may be true with respect to the certificate applications, but it is not true with respect to the finance applications, because those applications are set down almost immediately.

Mr. LANCASTER: I am sure our hearing here bears that out, but at that time we had no experience in it, and I don't think he had either, but that was his reason for requiring us to pay upon approval by the Railroad Commission of Texas.

Mr. YOUNG: If the Board please, we want to state this on the record, that as far as the Fort Worth Warehouse & Storage Company's application or permit is concerned, we would like authority to have as quick action on that as possible, for the reason that since we filed it, of course, it has been public property and knowledge, and it has been prejudicial to the line, and it will continue to be prejudicial to the line until this trade is consummated. For a good many reasons which are not necessary for me to go into now, the Commissioner can readily see and understand, as soon as a matter of this sort is made public property, everybody

else goes after his business to get it away from him during the transitory period, and get it away from the fellow he is selling to. So it is not only prejudicial to us, but to the purchaser of the certificate and for that reason, we would
1130 like, in this uncontested case, to have just as quick action as we can, because it has already been unnecessarily and unavoidably delayed since back there in June or July.

Chairman TERRELL: Is there anything more? (No response.) Do you want to file any briefs?

Mr. LANCASTER: I would like to inquire if the Board feels it would be of assistance to file a brief.

Chairman TERRELL: The Board does not care to have any.

Mr. LANCASTER: I think we can waive the filing of briefs unless there may be some point of interest to the Commission or the Board. It was our feeling that the case was sufficiently strong that it was almost an open and shut matter. However, sometimes our ideas are not always shared by other people.

(Discussion off the record.)

Mr. LANCASTER: Now, may I have permission to file a short brief within thirty days?

Chairman TERRELL: Briefs will be due November 26th. If there is nothing further, the hearing is closed.

(Whereupon at 4:15 P. M., November 11, 1936, hearing in the above entitled matter was closed.)

1131 INTERSTATE COMMERCE COMMISSION

No. MC-F-107

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE OF OPERATING RIGHTS OF W. A. JOHNSON, DOING BUSINESS AS JOHNSON MOTOR LINES.

No. MC-F-108

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE OF OPERATING RIGHTS OF FORT WORTH WAREHOUSE AND STORAGE COMPANY, INC.

Report and Order Recommended by Joint Board No. 171, Comprised of C. V. Terrell of Texas, Alex Grouchy of Louisiana, and Robert Valdez of New Mexico.

Served April 1, 1937.

NOTICE TO PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION Washington, D. C.,

and served on all other parties in interest, within 20 days from date of service shown above. Otherwise at the expiration of said 20-day period the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

1132 INTERSTATE COMMERCE COMMISSION

No. MC-F-107[1]

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE OF OPERATING RIGHTS OF W. A. JOHNSON, DOING BUSINESS AS JOHNSON MOTOR LINES.

Submitted_____ Decided_____

1. Purchase by The Texas and Pacific Motor Transport Company of a portion of the operating rights of W. A. Johnson, doing business as Johnson Motor Lines, approved and authorized.
2. Purchase by The Texas and Pacific Motor Transport Company of the operating rights of Fort Worth Warehouse and Storage Company, Inc., approved and authorized, subject to condition.

T. D. Gresham, R. S. Shapard, Robert Thompson, W. O. Reed and *S. W. Lancaster* for applicant.

William F. Young for Fort Worth Warehouse and Storage Company, Inc.

Frank H. Rawlings for W. A. Johnson, doing business as Johnson Motor Lines.

Carl L. Phinney for Merchants East Motor Lines.

Report and Recommended Order By Joint Board No. 171, Comprised of C. V. Terrell of Texas, Alex Grouchy of Louisiana, and Robert Valdez of New Mexico:

The Texas and Pacific Motor Transport Company, by separate applications filed September 12, 1936, seeks authority under section 213, Motor Carrier Act, 1935,[2] (a) to purchase a portion of the operating rights of W. A.

[1] This report also embraces No. MC-F-108, The Texas and Pacific Motor Transport Company—Purchase of Operating Rights of Fort Worth Warehouse and Storage Company, Inc.

[2] Hereinafter referred to as the act.

Johnson, doing business as Johnson Motor Lines[3], and (b) to purchase the operating rights of Fort Worth Warehouse and Storage Company, Inc.[4] A copy of each application was forwarded to the governor of each State in which applicant operates. The governor of each State in which any part of the properties or operations of the carriers involved in the proposed transactions is situated, also such carriers and the applicant and other parties known to have a substantial interest in the proceedings were notified of the time and place for a public hearing on the applications.

By orders heretofore entered, pursuant to section 205 of the Act, the Commission, Division 5, created Joint Board No. 171, and referred each of the above-entitled matters to it for appropriate proceedings and for the recommendation of an appropriate order thereon, to be accompanied by reasons therefor. The application, to which no
1133 objection has been presented, were heard by us on a consolidated record and are herein considered in one report. At the hearing the applications and the accompanying exhibits, together with the record of the proceeding in No. *MC-F-106, W. A. Johnson, doing business as Johnson Motor Lines—Purchase of Operating Rights and Property of Carl Rose, doing business as West Texas Transportation Company*[5], were incorporated in and made a part of the record in the instant proceeding.

Applicant was incorporated under the laws of the State of Delaware on June 21, 1929, and is controlled by the Texas and Pacific Railway Company[6] through ownership of all of its capital stock, except directors' qualifying shares. Since September, 1929, it has rendered continuous pick-up and delivery service on less-than-carload freight for the railway and the latter's subsidiary rail companies, using the facilities of the rail lines and local independent trucking companies under contractual arrangement. In this service it solicits its own traffic, issues its own way bills, but does not itself perform any of the physical transportation. The line haul is performed by the railway at the existing rail rates and pick-up and/or delivery service to and from the rail stations is performed by local truckers paid by applicant. Under this arrangement, it was testified, the

[3] Hereinafter referred to as Johnson.
[4] Hereinafter referred to as Warehouse Company.
[5] Hereinafter referred to as Carl Rose.
[6] Hereinafter referred to as the railway.

railway receives 72 percent of applicant's gross receipts and 90 percent of its net income.

In addition to the above service, applicant is alleged to have conducted, since September, 1935, a common carrier truck operator, using its own equipment, between Monahans, Tex., and Lovington, N. Mex., between Marshall, Tex., and Shreveport, La., and between the latter point and Cypress, La., handling intrastate and interstate freight. Eleven vehicles are represented to be used in this service. Applications for certificates under section 206(b) of the act have been filed to authorize continuance of applicant's operations between Monahans and Lovington and between Marshall and Shreveport. It does not appear from the evidence that any such application has been filed covering the operation between Shreveport and Cypress.

Johnson is alleged to have been continuously engaged since May 16, 1927, as a common carrier of property by motor vehicle in intrastate and interstate commerce in the States of Texas and Oklahoma, operating 131 motor vehicles over routes extending generally, from Dallas and Fort Worth, Tex., on the south, to Enid and Oklahoma City, Okla., on the north, and from the former points to Abilene and Ballinger, Tex., via Dublin, Brownwood, Cross Plains, and Coleman, Tex., on the west and southwest, respectively. It is indicated that he also conducts a storage and warehouse business at Fort Worth, a storage and distributing business at Brownwood, and owns a majority of the stock of Johnson Transportation Company, Inc., a trucking company, operating between certain named points in Texas.

On May 14, 1936, Johnson entered into a contract with Carl Rose to purchase the latter's operating rights authorizing a common carrier motor truck transportation service within Texas between Dallas and Big Spring over a route via Fort Worth, Mineral Wells, Strawn, and Abilene, about 304 miles, and between Abilene and San Angelo over a route via Ballinger, 94 miles, and certain other property for a total consideration of $20,500, of which amount, there is allocated $4,350 to operating rights, and the balance to the other property to be transferred. An application[1] under section 213 of the act seeking the Commission's approval of the transaction was filed by Johnson on September 12,

[1] No. MC-F-106, W. A. Johnson, doing business as Johnson Motor Lines—Purchase of Operating Rights and Property of Carl Rose, doing business as West-Texas Transportation Company.

1936, and is now pending. A similar application* was
1134 also filed by him on August 18, 1936, seeking approval of his purchase of the operating rights and property of (1) V. C. Hardy, doing business as Hardy Transfer & Storage Company, and (2) Trinity Motor Freight Lines, motor truck companies operating in Texas and Oklahoma, and in Texas, respectively. The record shows that Johnson commenced actual operation of the Carl Rose line in July, 1936, and the lines of the other carriers in October, 1935.

The Warehouse Company was incorporated under the laws of Texas in February, 1919. It is represented as conducting a common carrier truck service between Dallas and Abilene over a route via Fort Worth and Weatherford, Tex., to Metcalf Gap, Tex., thence over two routes to Abilene, one via Breckenridge, and Albany, Tex., and the other via Strawn, Ranger, Eastland, and Cisco, Tex. It also operates over a branch route connecting the two routes between Metcalf Gap and Abilene at Breckenridge, on the north, and Ranger, Eastland and Cisco, on the south. In addition, it allegedly performs a local cartage and warehouse service in Fort Worth, and transports household goods between the latter point and all other points within Texas.

Johnson and the Warehouse Company have each made application to the Commission for a certificate under the so-called "grandfather" clause of the act.

By a contract executed June 9, 1936, applicant agreed, subject to the consent and approval of the governing State and Federal authorities, to purchase from Johnson that part of the Carl Rose operating rights to be acquired by him authorizing common carrier truck operations between Abilene and Big Spring over the route via Sweetwater, Roscoe, and Colorado, Tex., approximately 100 miles, and the good-will and going-concern value attached to such rights. No physical property is involved. The agreed purchase price is $12,000, allocated $6,000 to operating rights and $6,000 to good-will and going-concern value, to be paid, $1,000 upon execution of the contract and $11,000 when the sale and transfer is approved by the Railroad Commission of Texas. The testimony is that the transac-

*No. MC-F-95, W. A. Johnson, doing business as Johnson Motor Lines—Purchase of Operating Rights and Property of (1) V. C. Hardy, doing business as Hardy Transfer & Storage Company, and (2) Trinity Motor Freight Lines.

tion has been approved by the latter commission and that the full purchase price has been paid. Applicant, however, has not undertaken any operations under the rights in question.

The transaction between Johnson and Carl Rose heretofore described, has not, as yet, been acted upon by the Commission. A hearing on that application was held by Joint Board No. 170, on November 10, 1936, which filed and served its report and recommended order approving the sale and transfer there involved on April 1, 1937. Our consideration of the transaction between applicant and Johnson is predicated on the affirmative action of the Joint Board in the aforementioned case.

Under the terms of an agreement entered into between applicant and the Warehouse Company on June 10, 1936, the former agreed to purchase from the latter, subject to the approval of the governing State and Federal authorities, certificate of convenience and necessity No. 2125, issued by the Railroad Commission of Texas authorizing common carrier truck operations between Dallas and Abilene over the routes heretofore described, together with the good-will and going-concern value attached thereto, for a consideration of $25,000, payable $1,000 upon execution of the agreement and the balance when the sale and transfer is approved by the above-mentioned commissions. It is provided in the agreement that the Warehouse Company shall continue operations for its own account in the manner heretofore conducted until said approvals have been obtained, and for 15 days thereafter, or until such earlier time as applicant is in a position to take over the operations, and that if either the Commission or the Railroad Commission of Texas refuse to approve the sale and transfer of the aforesaid certificate, the Warehouse Company shall return the $1,000 paid on account of the purchase price, and if applicant fails or refuses to consummate the sale of the certificate and appurtenant rights, then the $1,000 shall be forfeited as liquidated damages. Under the agreement,
1135 applicant assumes no obligations or liabilities of the Warehouse Company. No physical property is involved. The latter company, it was testified, will continue all its operations not affected by this agreement.

Applicant's general balance sheet statement as of September 30, 1936, shows assets aggregating $110,889, consisting of current assets $75,700, including cash $51,145,

and traffic balances receivable $16,548; organization expenditures $3,556; transportation property $22,315; and deferred debits $9,318. Liabilities consist of current liabilities $87,505, of which the principal item is traffic balances payable $63,022; accrued depreciation on transportation property $3,432; other deferred credits $144; capital stock $10,000; and surplus $9,808. Its income statements for the years 1934 and 1935, and the nine months period ended September 30, 1936, show net income of $6,504, $5,546, and $5,012, respectively.

The balance sheet statement of the railway as of September 30, 1936, shows total assets of $215,063,690, including current assets $9,302,570, of which $2,933,395 is cash; and current liabilities of $4,119,047. Its income statements for 1934 and 1935 and the nine months period ended September 30, 1936, show net incomes of $1,031,944, $1,382,278, and $1,044,191, respectively.

No statements showing the financial condition of Carl Rose were introduced. Operating reports filed quarterly by him with the Railroad Commission of Texas copies of which were introduced in evidence in No. MC-F-106, show net income from his entire operations for the period April 1 to December 31, 1934, year 1935, and period January 1 to March 31, 1936, as $1,691, $6,595, and $888, respectively. The earnings derived by Johnson or Carl Rose from their respective operation of the segment of the latter's route between Abilene and Big Spring were not disclosed. Applicant maintains that since the Abilene-Big Spring route constitutes about one-fourth of Johnson's entire Carl Rose route, it would be reasonable to assume that at least 25 percent of the total earnings of that line were derived from the operation of the aforementioned segment. The percentage, it was stated, is actually much greater as a larger portion of the operating costs are attributable to the other portions of the line. Johnson testified that there has been a 60 to 70 percent increase in the volume of traffic handled over the entire Carl Rose line since he took over the operation in July, 1936, and that during the same period traffic on the Abilene-Big Spring segment increased 76 percent. He pointed out that in July, 1935, 140,993 pounds of freight were handled by Carl Rose between the latter points as compared with 233,973 pounds handled by him (Johnson) between the same points in July, 1936.

The balance sheet statement of the Warehouse Company as of September 30, 1936, shows total assets of $179,307,

consisting of current assets $28,708, representing cash $1,957, notes receivable $1,089, accounts receivable $23,108, and supplies $2,554; operating property $189,596, less accrued depreciation $49,824 franchises—West Texas Motor Lines $5,500; and other assets aggregating $5,327. Liabilities consist of current liabilities $24,303; equipment obligations $3,234; long-term obligations $28,000; deferred credits $1,000; capital stock $114,000; and surplus $8,770. The income statements covering the entire operations of this carrier for the years 1934 and 1935, and the nine-month period ended September 30, 1936, reflects a net deficit of $802 for 1934, and net income of $2,333 and $7,177 for 1935 and the nine-month period of 1936, respectively. The income statements covering the company's common carrier operations between Dallas and Abilene for the same periods show net income of $4,058, $6,115, and $8,105, respectively.

The operating rights which applicant proposes to acquire will provide it with a through highway route from Dallas to Big Spring. The Johnson segment between Abilene and Big Spring immediately parallels the line of the railway. Except for a short distance between Millsap and Strawn, the Warehouse Company segment between Dallas and Abilene, via Metcalf Gap, Strawn, and Eastland, also
1136 parallels the railway. No points on the route between Millsap and Abilene, via Metcalf Gap, Breckenridge, and Albany, except Mineral Wells and Breckenridge, are served by the railway or its subsidiary rail companies. The branch route between Breckenridge and Cisco, Eastland, and Ranger parallels the Cisco & Northeastern Railway Company, a subsidiary of the railway, as far as Parks, Tex.

It was represented that the bulk of the less-than-carload freight moving to points in the territory covered by the instant applications originates at Fort Worth and Dallas. Service to many of these points is provided by the railway through the operation of a daily fast merchandise train between Dallas and Big Spring, which leaves the former point at 8:00 p. m., and Fort Worth at 10:00 p. m., arriving at Big Spring at 8:00 a. m., the following morning. Cars are set out by this train at the larger towns along the line and delivery of the freight to the consignees' store door is made by local draymen under contract. Towns which do not receive a sufficient daily volume of merchandise freight to justify a set-out car are served by local trains which

pick up the freight for such stations at the nearest set-out point. It was pointed out that the local trains also perform station and industry switching in fluctuating volume with the result that no fixed schedule can be maintained in connection with their less-than-carload freight service.

If the proposed transactions are approved, applicant and the railway intend to establish a coordinated rail-truck service with the view to expediting the distribution of freight to these smaller communities. As typical of the operations proposed, applicant will load a truck at Abilene, a set-out point, with freight for towns between that point and Sweetwater; at Sweetwater, another set-out point, the truck will be loaded with freight for towns between Sweetwater and Colorado; and at Colorado, another set-out point, the same service will be provided the towns between Colorado and Big Spring. This arrangement, it was stated, will expedite deliveries to such points by from 1 to 24 hours and will enable the railway to handle the freight in question on regular and dependable schedules. Counsel for applicant, on brief, stated that the railway also proposes to utilize applicant's trucks for collecting and assembling freight for outbound shipment by rail and for transporting local freight for short distances between points on the routes proposed to be acquired.

It is in evidence that Dallas and Fort Worth are the principal distributing centers for central and northern Texas and that because of their close proximity to each other a high degree of competition exists between them. This circumstance, it was explained, has practically forced the railway to provide both points with identical service to the various destinations on its line. It was pointed out that shippers in both of these cities demand early morning delivery of their merchandise with the result that the railway is obliged to operate separate cars from both points, notwithstanding the combined freight from such points moving to many of the destinations could well be transported in one car. It appears that present fast schedules required by the demand for overnight service precludes the consolidation of such loading.

It was testified that applicant's acquisition of the operating rights of the Warehouse Company will enable it to operate trucks between the Dallas and Fort Worth stations of the railway which could be used to effect the consolidation of freight at either point, depending upon the direction of the through rail movement. As illustrative of

the manner in which such consolidation could be accomplished, it was pointed out that freight from Dallas assigned to points on the railway west of Fort Worth, such as Ranger, could be trucked from Dallas to Fort Worth and there loaded in a car regularly operated from the latter point to Ranger. The same method of operation, it was said, would obtain in connection with traffic originating at Fort Worth destined to points east of Dallas. It is estimated that the use of an average of 20 less cars each day could be eliminated, and that a net daily saving of more than $100 in the railway's present operating costs between Dallas and Fort Worth, could be effected by this method of handling.

1137 The investment in equipment necessary to perform the contemplated operations over the Johnson and Warehouse Company's routes is stated to be approximately $4,000 and $17,000, respectively. The total cost of the operating rights proposed to be acquired from the two carriers involved, including the aforementioned amounts for new equipment, is $58,000, which sum, the record indicates, will be advanced to applicant by the railway. It is estimated that applicant's total investment of $16,000 in the Johnson operation and $42,000 in the Warehouse Company's operation will yield an annual return of approximately 20 and 25 percent respectively.

As hereinbefore indicated applicant proposes to pay $12,000 for approximately a one-fourth portion of the entire operating rights acquired by Johnson from Carl Rose for only $4,350. Johnson explained that he obtained the latter's rights at that low figure by exercising an option given him by Carl Rose in December, 1934, and stated that, otherwise, it would not have been possible for him to obtain such rights for that price at the present time. The president of Merchants Fast Motor Line, testifying for applicant, asserted that the Carl Rose rights were a bargain at the price paid therefor and that, in his opinion, the amount proposed to be paid for the Warehouse Company's rights is fair and reasonable. He testified that his company operates a common carrier truck service between Dallas and Odessa, over the same routes here involved as far as Big Spring and, stated that its operating rights could not be purchased for $25,000. Odessa is approximately 62 miles west of Big Spring. The witness thought that the operation of the routes considered by applicant would not prejudice competitive lines but, on the contrary, would tend to stabilize the rate structure in that territory. It appears,

from the evidence, that competition will not be unduly restrained as all of the points located on the routes covered by the operating rights involved in the instant applications are served by other motor carriers. Moreover, the record shows that the primary purpose of the proposed acquisitions is to provide a better and more economical means of distributing the less-than-carload traffic of the railway rather than to divert traffic from competing motor carriers.

In our opinion the record amply demonstrates that consummation of the proposed transactions will enable the railway and applicant to render improved service to shippers in the territory affected and that the proposed coordination of rail and truck operations under a common management with the financial backing of the railway will be to the advantage to the public, and will not unduly restrain competition.

We recommend that the Commission find that the proposed purchase by The Texas and Pacific Motor Transport Company of that part of the operating rights of W. A. Johnson between Abilene and Big Spring, Tex., acquired from Carl Rose pursuant to authority granted in No. MC-F-106, including the right, pursuant to the "grandfather" application of Carl Rose, or his successor in interest, to operate between those points, and the right, so far as operating rights the transfer of which are herein authorized, to any certificate which hereafter may be issued as a result of said "grandfather" application, upon the terms and conditions set forth in the application filed in No. MC-F-107, will promote the public interest by enabling the Texas and Pacific Railway Company to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition, and that the conditions of section 213 of the act have been or will be fulfilled.

We further recommend to the Commission that the proposed purchase by The Texas and Pacific Motor Transport Company of the operating rights of Fort Worth Warehouse and Storage Company, including the right to operate pending determination of the "grandfather" application of the latter company and the right to any certificate which hereafter may be issued as a result of such application, upon the terms and conditions set forth in the application filed in No. MC-F-108, will promote the public interest by enabling the Texas and Pacific Railway Company to use service by motor vehicle to public advantage in its operations
1138 and will not unduly restrain competition, and that the conditions of section 213 of the act have been or will be fulfilled; *provided, however*, that the authority here-

in granted shall not be construed to include the right of rendering service to, or interchanging traffic at, any point other than a station on the Texas and Pacific Railway Company, or a presently owned subsidiary thereof.

An appropriate order, in the form hereto appended, should be entered.

By Joint Board No. 171, Joint Board Members C. V. Terrell, Alex Grouchy, and Robert Valdez.

C. V. TERRELL (Signature)
ALEX GROUCHY (Signature)
ROBERT VALDEZ (Signature)

1139 Recommended by Joint Board No. 171, Comprised of C. V. Terrell of Texas, Alex Grouchy of Louisiana, and Robert Valdez of New Mexico.

C. V. TERRELL (Signature)
ALEX GROUCHY (Signature)
ROBERT VALDEZ (Signature)

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the day of A. D. 1937.

No. MC-F-107

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE OF OPERATING RIGHTS OF W. A JOHNSON, DOING BUSINESS AS JOHNSON MOTOR LINES.

No. MC-F-108

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE OF OPERATING RIGHTS OF FORT WORTH WAREHOUSE AND STORAGE COMPANY.

Investigation of the matters and things involved in these proceedings having been had, and said Division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;

IT IS ORDERED, That the purchase by The Texas and Pacific Motor Transport Company of that part of the operating rights of W. A. Johnson, doing business as Johnson Motor Lines, between Abilene and Big Spring, Tex., acquired from Carl Rose, doing business as West Texas Transportation

Company, pursuant to authority granted in *No. MC-F-106, W. A. Johnson, doing business as Johnson Motor Lines—Purchase of Operating Rights and Property of Carl Rose, doing business as West Texas Transportation Company,* including the right, pursuant to the "grandfather" application of said Carl Rose, or his successor in interest, to operate between the points named, and the right, so far as operating rights the transfer of which is herein authorized, to any certificate which hereafter may be issued as a result of said "grandfather" application, upon the terms and conditions set forth in application No. MC-F-107, above, be, and it is hereby, approved and authorized;

It is Further Ordered, That the purchase by The Texas and Pacific Motor Transport Company of the operating rights of Fort Worth Warehouse and Storage Company, Inc., including the right to operate pending determination of the "grandfather" application of the latter company and the right to any certificate which hereafter may be issued as a result of such application, upon the terms and conditions set forth in application No. MC-F-108, above, be, and it is hereby, approved and authorized, *provided, however,* that the authority herein granted shall not be construed to include the right of rendering service to, or interchanging traffic at, any point other than a station on the Texas and Pacific Railway Company, or a presently owned subsidiary thereof;

It is Further Ordered, That, if the parties to the transactions herein authorized desire to consummate same, they shall notify this Commission of their intention so to do in writing at least 10 days prior to the consummation date, in order that such arrangements as are necessary to comply with provisions of the Act and rules and regulations of this Commission with respect to filing tariffs, designating agent for service of notices, orders, and process, and all other matters covered thereby may be made;

1140 It is Further Ordered, That recital in accompanying report of balance sheet items shall not be construed as approving expenditures represented thereby, or as approving the accounting methods of companies or individuals for which financial data are shown.

It is Further Ordered, That before recording the purchase of said operating rights upon its books, applicant shall submit the related journal entries, in duplicate, to our Bureau of Motor Carriers for approval;

And it is Further Ordered, That nothing herein contained shall be construed as a determination of the rights of

any person or persons under any section of the Motor Carrier Act, 1935, except section 213 thereof as expressly determined herein.

By the Commission, Division 5.

W. P. BARTEL
Secretary

(SEAL)

1142 Interstate Commerce Commission

No. MC-F-107[1]

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE—W. A. JOHNSON

Submitted April 21, 1937 Decided May 20, 1937

Purchase by The Texas and Pacific Motor Transport Company of portions of the operating rights of (1) W. A. Johnson, doing business as Johnson Motor Lines, and (2) Fort Worth Warehouse and Storage Company, Inc., approved and authorized, subject to condition.

T. D. Gresham, R. S. Shapard, Robert Thompson, W. O. Reed, S. W. Lancaster, William F. Young, and Frank H. Rawlings for applicant and vendors.

Carl L. Phinney for intervener.

Report of the Commission

DIVISION 5, COMMISSIONERS EASTMAN, LEE, AND CASKIE

BY DIVISION 5:

The Texas and Pacific Motor Transport Company, by separate applications filed September 12, 1936, seeks authority under section 213, Motor Carrier Act, 1935, to purchase portions of the operating rights of (1) W. A. Johnson, doing business as Johnson Motor Lines[2], and (2) Fort Worth Warehouse and Storage Company, Inc.[3] Unless otherwise indicated, all points mentioned herein are in Texas.

The applications were duly referred, pursuant to section 205, for hearing and recommendation of an appropriate order. A copy of each application was forwarded to the governor of each State in which applicant operates, but

[1] This report also embraces no. MC-F-108, The Texas and Pacific Motor Transport Company—Purchase—Fort Worth Warehouse and Storage Company, Inc.

[2] Hereinafter referred to as Johnson.

[3] Hereinafter referred to as Warehouse.

no representation has been made by any State authority. Upon due notice a public hearing was held at which both applications were heard on a consolidated record and at which the record in No. MC-F-106, *W. A. Johnson—Purchase—Carl Rose* .... M. C. C. ...., hereinafter called No. MC-F-106, was incorporated in and made part of the record herein. Merchants Fast Motor Lines intervened in support of the applications. No exceptions to the joint board's report and recommended order were filed, but we stayed the recommended order.

Applicant was incorporated in Delaware on June 21, 1929, and is controlled by The Texas and Pacific Railway Company, hereinafter called the railway, through ownership of all of its capital stock, except directors' qualifying shares. Since September, 1929, it has rendered pick-up and delivery service on less-than-carload freight for the railway using the facilities of local independent trucking companies under contractual arrangement. Applicant also has conducted, since September, 1935, a common-carrier truck operation, using its own equipment, between Monahans and Lovington, N. Mex., between Marshall and Shreveport, La., and between the latter point and Cypress, La. Johnson and the Warehouse each have a "grandfather" application pending before us and applicant has applied for authority to continue certain of its common-carrier operations. Several competitors operate over the routes of both Johnson and the Warehouse.

1143

Applicant's general balance-sheet statement as of September 30, 1936, shows assets aggregating $110,889, consisting of Current assets $75,700, including cash $51,145, and traffic balances receivable $16,548; organization expenditures $3,556; transportation property $22,315; and deferred debits $9,318. Liabilities consist of: Current liabilities $87,505, of which the principal item is traffic balances payable $63,022; accrued depreciation on transportation property $3,432; other deferred credits $144; capital stock $10,000; and surplus $9,808. Its income statements for 1934 and 1935, and the 9 months ended September 30, 1936, show net income of $6,504, $5,546, and $5,012, respectively.

The balance-sheet statement of the railway as of September 30, 1936, shows total assets of $215,063,690, including current assets $9,302,570, of which $2,932,395 is cash, and current liabilities of $4,119,047. Its income statements

for 1934 and 1935 and the 9 months ended September 30, 1936, show net income of $1,031,944, $1,382,278, and $1,044,191, respectively.

Applicant would acquire continuous operating rights between Dallas and Big Spring if the applications are approved. No physical property is involved. The portion of the route between Dallas and Abilene, hereinafter called the Warehouse operation, would be purchased from the Warehouse for $25,000; the portion between Abilene and Big Spring, hereinafter called the Johnson operation, would be acquired from Johnson for $12,000. The Warehouse operation is via Fort Worth, Weatherford, and Metcalfe Gap, thence over two routes to Abilene, one via Breckenridge and Albany, and the other via Strawn, Ranger, Eastland, and Cisco; also a branch route connecting the two routes between Metcalfe Gap and Abilene at Breckenridge, on the north, and Ranger, Eastland, and Cisco, on the south. Under the agreements Johnson retains all his other operating rights, which are described in No. MC-F-106, and the Warehouse retains its Fort Worth local cartage rights and a household goods irregular-route operation, between Fort Worth and all other Texas points.

The Johnson operation, 100 miles, is about one-fourth of the operating rights formerly owned by Carl Rose, transfer of all of the latter's rights to Johnson having been approved in No. MC-F-106. In that proceeding the parties assigned a value of $4,350 to the entire operating rights. A one-fourth portion of those rights is here proposed to be sold for $12,000 and the discrepancy between the two sale figures is explained as growing out of the fact that Johnson in December, 1934, acquired from Rose an option to purchase the latter's operating rights at a figure far below their actual worth. The price of $12,000 is claimed as more nearly representing present actual worth of the rights here in question, and in support of such claim applicant points out that the net income of Rose for his entire operations for the period April 1 to December 31, 1934, year 1935, and period January 1 to March 31, 1936, was $1,691, $6,595, and $888, respectively, and that one-fourth of Rose's weighted average net income for 1935 and 1936 represents an annual earning, based on a purchase price of $12,000, of approximately 10 percent. The arbitrary one-fourth allocation is made because Rose did not segregate his operations in such a way as to determine what was the exact income from the Abilene-Big Spring operation.

Under the circumstances it would be difficult to justify the $12,000 purchase price were it not for applicant's confident belief that by integrating the Johnson and Warehouse operations in railway station-to-station service substantial economies will accrue to the railway. In considering a similar question of apparent excessive purchase price, we stated, in *Virginia Carolina Coach Co. Purchase*, 1 M. C. C. 309, 311:

> While the price to be paid seems, on the evidence, to be rather high, we are not on that account disposed to disapprove the purchase. As has been seen, there
> 1144 are reasons for believing that the property and operating rights will be worth more to applicant than they have been worth to vendor. Nor does any harm to the public interest appear to threaten. We are forbidden by section 216(h) from taking into consideration or allowing as elements of value for rate-making purposes, "good will, earning power, or the certificate under which such carrier is operating." Moreover, the total amount involved is small and not at all likely to harm the public indirectly through ill effect on applicant.

The net income from the Warehouse operation for 1934, 1935, and the first 9 months of 1936 was $4,058, $6,115, and $8,105, respectively. The weighted average net income for the 3-year period, based on a purchase price of $25,000, represents an earning of approximately 25 percent. After purchasing equipment with which to operate the combined Johnson and Warehouse operations applicant estimates its annual return on the entire investment will be in excess of 15 per cent.

The Johnson operation immediately parallels the railway and, except for some short-cut highway routes between certain railway stations, the Warehouse operation also generally parallels the railway. The distance at maximum point of divergence between highway and railway at no point exceeds 25 miles. Evidence as to how these highway and railway operations may be coordinated is similar in character and leads to the same conclusions reached in *Pennsylvania Truck Lines, Inc., Acquisition of Control*, 1 M. C. C. 101, ... M. C. C. ....., ... M. C. C....., wherein we approved acquisition of a truck line by a railroad subsidiary. We there indicated the character and

scope of approved and disapproved operations[4] and, among other things, conditioned our authorization to exclude the privilege of rendering service from, to, or the interchange of traffic at, any point not a station on the railroad. That condition was imposed to protect the traffic rights of competing common carriers at points not previously served by the railroad, and for the same reason a similar condition will be imposed herein.

Following the case just cited, and on this record, we find that purchase by The Texas and Pacific Motor Transport Company (1) of that part of the operating rights of W. A. Johnson between Abilene and Big Spring, Tex., acquired from Carl Rose pursuant to authority granted in no. MC-F-106, including the right, pursuant to the "grandfather" application of Carl Rose, or his successor in interest, to operate between those points, and the right, so far as operating rights the transfer of which is herein authorized, to any certificate which hereafter may be issued as a result of said "grandfather" application, upon the terms and conditions set forth in the application in no. MC-F-107, which terms and conditions we find to be just and reasonable, and (2) the operating rights, except Fort Worth local cartage operating rights and irregular-route operation rights as previously described, of Fort Worth Warehouse and Storage Company, Inc., including the right to operate pending determination of the "grandfather" application of the latter company and the right, so far as operating rights the transfer of which is herein authorized, to any certificate which hereafter may be issued as a result of any such application, upon the terms and conditions set forth in the application in no. MC-F-108, which terms and conditions we find to be just and reasonable, will promote the public interest by enabling The Texas and Pa-
1145 cific Railway Company to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition, and that the conditions of section 213 of the act have been or will be fulfilled: pro-

[4] "Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the Railroad itself, those which compete with an established motor carrier, or which invade, to a substantial degree, territory already adequately served by another rail carrier. Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station' service." [.... M. C. C. ...., ..., decided March 6, 1937.]

vided, however, that the authority herein granted shall not be construed to include the right of rendering service from, to, or interchanging traffic at, any point other than a station on The Texas and Pacific Railway Company; and shall be subject to such further limitations or restrictions as this Commission may hereafter find it necessary to impose in order to ensure that the service shall be auxiliary or supplementary to the train service of said railway company and shall not unduly restrain competition.

An appropriate order will be entered.

CASKIE, *Commissioner*, concurring:

I concur in this report but believe that a brief statement of my reasons for doing so is desirable.

The purchase by applicant railroad-controlled motor carrier of the operating rights of certain independent motor carriers here authorized is made subject to conditions corresponding in all respects with those imposed in *Pennsylvania Truck Lines, Inc., Acquisition of Control*, 1 M. C. C. 101, ... M. C. C. ....., ... M. C. C..... One of these conditions, which is fundamental, is that the acquired operating rights shall be used *only* to provide service which is auxiliary or supplementary to train service of the controlling railroad. The illustration of operations which are auxiliary or supplementary to train service given in the cited case is that of the *substitution* of trucks for peddler or way-freight service in what is commonly called "station-to-station" service. These are operations such as are performed primarily for the controlling railroad with a view to enabling it to achieve greater efficiency and economy in the conduct of its business as a railroad. Neither this report nor the reports in the cited case, according to my understanding, contains any authority, express or implied, whereby applicant, independently of the railroad, may use the operating rights which it is permitted to acquire to engage in motor-carrier operations that compete either with the railroad itself or, except in so-called pickup and delivery service within terminal areas, with an established motor carrier. The reasons for imposing this condition are fully stated in the reports in the cited case and need not be repeated here. Suffice it to say, if applicant deems this and the other imposed conditions too onerous, as pointed out in the first supplemental report in the cited case, it may refrain in the first instance from exercising the permissive authority here granted.

1146 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 20th day of May, A. D. 1937.

No. MC-F-107

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE—W. A. JOHNSON

No. MC-F-108

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE—FORT WORTH WAREHOUSE AND STORAGE COMPANY, INC.

Hearing and investigation of the matters and things involved in this proceeding having been had, and said Division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is made a part hereof:

It is ordered, That the purchase by The Texas and Pacific Motor Transport Company of portions of the operating rights of (1) W. A. Johnson, doing business as Johnson Motor Lines, and (2) Fort Worth Warehouse and Storage Company, Inc., be, and it is hereby, approved and authorized, subject to the terms and conditions set out in the findings in said report;

It is further ordered, That if the parties to the transactions herein authorized desire to consummate same, on the terms and conditions set forth in the findings in said report, they shall notify this Commission, in writing, of their intention to do so, upon such terms and conditions, at least 10 days prior to the consummation date, and thereafter promptly take such further steps as will insure full compliance with the requirements of sections 215, 217, and 221 of the act and with rules, regulations, and requirements promulgated thereunder;

It is further ordered, That recital in the accompanying report of balance-sheet and other financial data shall not be construed as approving accounting methods or expenditures represented thereby;

It is further ordered, That before recording the acquisitions upon its books, applicant shall submit, in duplicate, the related journal entries to our Bureau of Motor Carriers for approval;

And it is further ordered, That nothing herein contained shall be construed as a determination of the rights of any

person or persons under any section of the Motor Carrier Act, 1935, other than under section 213 thereof as expressly determined herein.

By the Commission, Division 5.

W. P. BARTEL,
Secretary.

(SEAL)

1148 Modeled After
Form BMC-21

APPLICATION FOR AUTHORITY, UNDER SECTION 213, MOTOR CARRIER ACT, 1935, TO PURCHASE THE PROPERTIES OF A MOTOR CARRIER

Before the Interstate Commerce Commission

Application of The Texas and Pacific Motor Transport Company to Purchase Portion of Certificate of Convenience and Necessity from W. A. Johnson, Doing Business as Johnson Motor Lines—Docket No. BMC-F 107

Applicant states:

I. That full and correct name of applicant is The Texas and Pacific Motor Transport Company. Business Address: Texas and Pacific Bldg., Dallas, Dallas County, Texas.

II. That applicant is a corporation doing business under its own name and that information respecting applicant is set forth in Exhibit A and supplemental exhibits, attached hereto and made a part hereof.

III. That information respecting the nature of the transaction proposed and the terms and conditions thereof, is set forth in Exhibit B and supplemental exhibits, attached hereto and made a part hereof.

IV. That there are set forth in Exhibit C, attached hereto and made a part hereof, the facts and circumstances relied upon to establish that the transaction covered by this application will promote public interest by enabling the rail carrier with which applicant is affiliated to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition.

1149 V. That applicant will submit such additional information to support the applicant's prayer herein as the Commission may require.

WHEREFORE, the applicant prays that the Interstate Commerce Commission enter an order approving

and authorizing the transaction proposed as set forth in Exhibit B, and supplemental exhibits.

AND APPLICANT FURTHER PRAYS: That if the approval and authorization of the transaction covered by this application necessitate the transfer of one or more Certificates of Public Convenience and Necessity or Permits, the Commission take such action in the premises as may be deemed necessary to consummate such transfers.

Dated this the 22nd day of August, 1936.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY.

By (Sgd.) J. L. LANCASTER, *President.*

Post Office Address:
T&P Bldg., Dallas, Tex.

OATH

State of Texas)
County of Dallas) ss.:

J. L. Lancaster makes oath and says that he is the President of The Texas and Pacific Motor Transport Company; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Sgd.) J. L. LANCASTER.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this the 22nd day of August, 1936.

(Sgd.) MARY L. SCHURMAN.
(SEAL)

My Commission expires May 31st, 1937.

1196 C-1

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 28th day of November, A. D., 1938.

No. MC 50544 Sub. 6*

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, DALLAS, TEXAS

After due investigation:

It appearing, That applicant in accordance with the requirements of Section 206, Motor Carrier Act, 1935, including due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto,* and made a part of this order, and that the said applicant or predecessor in interest was in bona fide operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public,* a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto,* and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order,* unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order,* then said applicant shall show cause, if any there be, *within 60 days from the date of this*

order, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

And it is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order,* a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission. Otherwise such protests shall be denied.

By the Commission, division 5.

(SEAL)

W. P. BARTEL
Secretary

1197 Appendix to the order of the INTERSTATE COMMERCE COMMISSION, Division 5, dated the 28th day of November, A. D., 1938. *C-v*

No. MC 50544 Sub. 6*

APPLICATION OF TEXAS & PACIFIC MOTOR TRANSPORT COMPANY, DALLAS, TEXAS

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of the commodities indicated, over the regular route, between fixed termini, and to and from intermediate points, is as specified below:

Commodities generally, except those of unusual value, and except high explosives, livestock, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Abilene, Tex., and Big Spring, Tex.:

From Abilene over U. S. Highway 80 to Big Spring, and return over the same route.

All intermediate points.

* This order embraces authority applied for under Docket No. MC 60528, which applicant's predecessor in interest, W. A. Johnson, purchased from Carl Rose, pursuant to Finance Docket No. MC-F-106 approved May 11, 1937, and applicant named herein, purchased from W. A. Johnson pursuant to Finance Docket No. MC-F-107 approved May 20, 1937.

1198 Certificate of Public Convenience and Necessity

No. MC 50544 Sub 6*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, DALLAS, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 14th day of December, A. D., 1942.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over a regular route,

Between Abilene, Tex., and Big Spring, Tex.:

From Abilene over U. S. Highway 80 to Big Spring, and return over the same route.

Service is authorized to and from all intermediate points.

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* This certificate embraces a portion of the operating rights applied for by Carl Rose under Docket No. MC 60528, and transferred to W. A. Johnson pursuant to No. MC-F 106, approved May 11, 1937, and assigned Docket No. MC 59814 Sub 1; the portion of said rights embraced herein was in turn transferred to the above-named carrier pursuant to MC-F 107, approved May 20, 1937.

The authority herein granted shall not be construed to include the right of rendering service from, to, or interchanging traffic at, any point other than, a station on The Texas and Pacific Railway Company; and shall be subject to such further limitations or restrictions as this Commission may hereafter find it necessary to impose in order to insure that the service shall be auxiliary or supplementary to the train service of said railway company and shall not unduly restrain competition.

1199 And It Is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

(SEAL) W. P. Bartel
Secretary

1200 Interstate Commerce Commission

No. MC-50544 (Sub-No. 7)

The Texas and Pacific Motor Transport Company
Extension—Alternate Routes

Submitted June 13, 1939 Decided October 21, 1941

Public convenience and necessity found to require operation, subject to certain conditions, by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, with certain exceptions, between Weatherford and Mineral Wells, Tex., over U. S. Highway 80A, and between Weatherford and a point approximately 2½ miles south of Strawn, Tex., over U. S. Highway 80, serving Thurber as an intermediate point. Issuance of a certificate, subject to certain conditions, approved upon compliance by applicant with certain requirements and application in all other respects denied. *Samuel W. Lancaster* for applicant,

Report of the Commission

Division 5, Commissioners Lee, Rogers, and Patterson

By Division 5:

This application was handled under a modified procedure without hearing. Exceptions were filed by applicant to the recommended order of the joint board.

By application filed December 27, 1938, The Texas and Pacific Motor Transport Company, a corporation of Dallas, Tex., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, except those of unusual value, dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, those requiring special equipment, and those injurious or contaminating to other lading, between Weatherford and Mineral Wells, Tex., over U. S. Highway 80, serving no intermediate or off-route points, and between Weatherford and a point on U. S. Highway 80 approximately 2½ miles south of Strawn, Tex., over Texas Highway 89, serving the intermediate point of Thurber, Tex. The application is unopposed.

Applicant, except for qualifying shares held by its directors, is a wholly-owned subsidiary of The Texas and Pacific Railway Company, hereinafter called the railway, and, so far as here pertinent, is presently engaged in operation as a common carrier by motor vehicle of general commodities, except as previously stated, between Dallas and Abilene, Tex., under authority granted by our order of September 21, 1938, as amended August 16, 1941, in
1201 No. MC-50544 (Sub-No. 5) as follows: From Dallas over U. S. Highway 80 through Millsap and Mineral Wells to Metcalfe Gap, Tex., thence over U. S. Highway 80A to Abilene; also from Dallas over U. S. Highway 80 to Abilene; serving all intermediate points except Albany, Metcalfe Gap, Palo Pinto, Caddo, and Brad, Tex., points not served by the railway. These operations were acquired by purchase which was authorized May 20, 1937, in *Texas & P. Motor Transport Co.—Purchase—Johnson*, 5 M. C. C. 39. Applicant has interchange arrangements with the railway and a subsidiary railroad thereof for the through movement of less-than-carload traffic.

Since our order of September 21, 1938, that portion of U. S. Highway 80 between Weatherford and Mineral Wells passing through Millsap has been relocated a short distance north of Millsap providing a more direct route between Weatherford and Mineral Wells, and the highway between these latter points has been renumbered U. S. Highway 80A. The old portion through Millsap is now unnumbered. Applicant desires to use this new improved section except when it is necessary to use the old section in serving Millsap. The other highway applicant seeks

authority to use is an improved road recently constructed and originally designated Texas Highway 89, but it has since been renumbered U. S. Highway 80. It extends from Weatherford to a point just south of Strawn where it joins U. S. Highway 80 extending into Abilene. Each of the proposed highways closely parallels the lines of the railway which also diverge at Weatherford. The service will be no different from that applicant is presently authorized to perform except that it desires authority to serve the village of Thurber which is an intermediate point on new U. S. Highway 80 and is a station on the rail line of the railway. As seen, both of the requested highways are connecting links in the routes presently traversed by applicant. Applicant has been granted State authority to operate over the highways in question. Their use would permit a time saving of approximately 20 minutes between Weatherford and Mineral Wells and of an hour over the other highway, and the operations would be conducted over improved highways, resulting in a safer and a more economical and efficient service.

The joint board recommended that the authority requested be granted subject, however, to conditions similar to those imposed in *Kansas City Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221. The imposition of these conditions, particularly condition 3 and commonly referred to as the prior or subsequent rail haul condition, forms the basis of applicant's exceptions.

The joint board evidently included the conditions objected to because certain other operations previously authorized applicant and unrelated to those here involved were so conditioned. But the authority here requested, except for the inclusion of a small additional rail point, merely concerns the use of improved highway segments in performing an existing service in a more efficient and economical manner and which service applicant is authorized to perform subject only to the condition that applicant shall not render service from or to, or interchange traffic at, any point not a station on a rail line of the railway and such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which
1202 is auxiliary to, or supplemental of, train service of said railway company, and in order to ensure that the service rendered shall not unduly restrain competition. Under the circumstances, we are of the opinion that these same conditions only should be here imposed.

Applicant is fit, willing, and able properly to perform the proposed service, and it is clearly in the public interest.

We find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities except commodities of unusual value, dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods, supra*, commodities in bulk, and those requiring special equipment, between Weatherford and Mineral Wells, Texas, over U. S. Highway 80A, serving no intermediate point, and between Weatherford and a point just south of Strawn, Tex., over U. S. Highway 80, serving Thurber as an intermediate point, subject to the following conditions:

1. Applicant shall not serve any point not a station on a rail line of The Texas and Pacific Railway Company.
2. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service, and in order to ensure that the service rendered shall not unduly restrain competition.

We further find that applicant is fit, willing and able properly to perform such service and to conform to the provisions of the Interstate Commerce Act and our rules and regulations thereunder; that a certificate authorizing such operation should be granted, and that the application should be denied in all other respects.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application, except to the extent a certificate is granted herein.

1203 *Order*

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 21st day of October, A. D. 1941

No. MC-50544 (Sub-No. 7)

The Texas and Pacific Motor Transport Company
Extension—Alternate Routes

Investigation of the matters and things involved in this proceeding having been made, and said division, on the

date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied, effective December 10, 1941.

By the Commission, division 5.

(SEAL) W. P. BARTEL
Secretary

1204 *Certificate of Public Convenience and Necessity*

No. MC 50544 SUB 7

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 23rd day of December, A. D. 1941

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, and those requiring special equipment over regular routes,

Between Weatherford, Tex., and Texas points, as follows:

From Weatherford over Alternate U. S. Highway 80 to Mineral Wells;
From Weatherford over U. S. Highway 80 to a point approximately two and one-half miles south of Strawn, Tex.; and
Return over these routes to Weatherford.
Service is authorized to and from the intermediate point of Thurber, Tex.
Service herein authorized is subject to the following conditions:
Said carrier shall not serve any point not a station on a rail line of The Texas and Pacific Railway Company.
Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service, and in order to ensure that the service rendered shall not unduly restrain competition.

1205 And it is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. Bartel
Secretary

(Seal)

1207 Modeled After
Form BMC-21

Application For Authority, Under Section 213, Motor Carrier Act, 1935, to Purchase the Properties of a Motor Carrier

Before the Interstate Commerce Commission

Docket No. BMC-F 378

Application of The Texas and Pacific Motor Transport Company to Purchase Operating Rights of Southern Transportation Company, a Texas Corporation.

Applicant states:

I. That full and correct name of applicant is The Texas and Pacific Motor Transport Company.
Business Address: Texas and Pacific Blg., Dallas, Dallas County, Texas.

II. That applicant is a corporation doing business under its own name and that information respecting applicant is set forth in Exhibit A and supplemental exhibits, attached hereto and made a part hereof.

III. That information respecting the nature of the transaction proposed and the terms and conditions thereof, is set forth in Exhibit B and supplemental exhibits, attached hereto and made a part hereof.

IV. That there are set forth in Exhibit C, attached hereto and made a part hereof, the facts and circumstances relied upon to establish that the transaction covered by this application will promote the public interest by enabling the rail carrier with which applicant is affiliated to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition.

1208 V. That applicant will submit such additional information to support the applicant's prayer herein as the Commission may require.

WHEREFORE, the applicant prays that the Interstate Commerce Commission enter an order approving and authorizing the transaction proposed as set forth in Exhibit B, and supplemental exhibits.

AND APPLICANT FURTHER PRAYS: That if the approval and authorization of the transaction covered by this application necessitate the transfer of one or more Certificates of Public Convenience and Necessity or Permits, the Commission take such action in the premises as may be deemed necessary to consummate such transfers.

Dated this the 10th day of July, 1937.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY.

(Sgd) J. A. SOMERVILLE
Vice-President

Post Office Address: T & P Bldg.
Dallas, Texas.

OATH

State of Texas }
County of Dallas } ss.:

J. A. Somerville makes oath and says that he is the Vice-President of The Texas and Pacific Motor Transport Com-

pany; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Sgd) J. A. SOMERVILLE

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this the 10th day of July, 1937.

(Sgd) R. G. HALL

My Commission expires May 31, 1939

1239 Before the Interstate Commerce Commission

Docket MC-F-378

TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—PURCHASE —SOUTHERN TRANSPORTATION COMPANY

Transcript of Hearing

Dallas, Texas
Friday, August 27, 1937
9 o'clock A. M.

Before: JOINT BOARD No. 171, composed of HONORABLE C. V. TERRELL, Chairman (Texas), HONORABLE ALEX GROUCHY (Louisiana), HONORABLE ROBERT VALDEZ (New Mexico, represented by ROY S. WALKER), EXAMINER JOHN S. HIGGINS, sitting in for the Commission.

Met pursuant to notice.

APPEARANCES:

R. S. SHAPARD, W. O. REED, and SAM LANCASTER, T. & P. Building, Dallas, Texas, appearing for applicant;

CARL B. CALLOWAY and ROLLO E. KIDWELL, Calloway and Reed, 1902 Sante Fe Building, Dallas, Texas, appearing for Southern Transportation Company and for East Texas Motor Freight Lines, intervening in support of the applicant;

1240 ED P. BYARS, 910 Commerce Street, Fort Worth, Texas, appearing in support of applicant;

SAM GOODSTEIN, 1101 Commerce Street, appearing for Dallas Chamber of Commerce;

REAGAN SAYERS, Fair Building, Fort Worth, Texas, appearing for H. E. English, doing business as Red Ball Motor Freight Lines.

1242 PROCEEDINGS

Chairman TERRELL: Joint Board No. 171 will come to order. We will call for hearing Docket No. MC-F-378, being the application of the Texas and Pacific Motor Transport Company to purchase Southern Transportation Company. This Board is composed of the Honorable Alex Grouchy of Louisiana, and Roy S. Walker will take the place of the Honorable Robert Valdez of New Mexico and myself, C. V. Terrell, and represented by John S. Higgins, Examiner for the Interstate Commerce Commission.

Exam. HIGGINS: The Interstate Commerce Commission has a rule which prohibits smoking in the hearing room at any time.

No copies of the transcript will be furnished gratis, those desiring copies of the transcript will make their own arrangements with the Reporter.

Those appearing in a representative capacity must comply with the provisions of the Commission's rules concerning admission to practice before it. Complete information concerning such rules may be obtained from the Secretary, Interstate Commerce Commission, Washington, D. C. Furthermore, those entering appearances must indicate whether they are members of the partnership which is a party to the cause, a bona fide officer of the corporation which is a party to the cause or present in a representative capacity. In all cases complete addresses should be shown on appearance blanks.

1243 Have you gentlemen who filed appearances with the Reporter all been admitted to practice before the Interstate Commerce Commission?

(No response.)

If testimony has been prepared in the form of written questions and answers, copy of such statements should be supplied for the Reporter and the Examiner as well as copy for members of the Joint Board, and witnesses directed to refrain from reading at an excessive rate of speed.

Submitting Exhibits, sufficient copies should be available to permit of the following distribution by counsel; original to the Reporter, one copy to each Joint Board member,

two copies to the Examiner and one copy to each of opposing counsel and others who are permitted to actively participate in a case. When a series of Exhibits on the same subject matter is to be offered, it will facilitate matters if arrangement is made in sets and distribution to those entitled to receive them is effected when witness who will offer same takes stand.

Chairman TERRELL: Now the appearances.

Mr. LANCASTER: W. O. Reed and Sam Lancaster, appearing for the applicant.

Chairman TERRELL: Any other appearances?

Mr. KIDWELL: Rollo E. Kidwell and Carl B. Calloway, of Calloway & Reed, Sante Fe Building, Dallas, Texas, appearing for Southern Transportation Company and for the East Texas Motor Freight Lines. I hand the reporter
1244 three copies of petition for leave to intervene on behalf of each of these carriers and ask that the record show that leave to intervene is granted.

Chairman TERRELL: Let the record show that leave to intervene is granted on behalf of each of the intervenors.

Any further appearances by anybody?

Mr. GOODSTEIN: Sam Goodstein, 1101 Commerce Street, Dallas, Texas, appearing for Dallas Chamber of Commerce.

Mr. LANCASTER: We move that the application and the Exhibits attached thereto be made a part of the record for all purposes.

Chairman TERRELL: Any objections?

(No response.)

It will so be admitted.

Mr. LANCASTER: Our first witness will outline our application.

T. E. HUFFMAN, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Huffman, state your full name.

A. T. E. Huffman.

Q. Where do you live and what is your occupation?

A. I reside in Dallas, Texas and am employed by the Texas and Pacific Railway Company as General Merchandise Traffic Agent and by the Texas and Pacific Transport Company as General Freight Agent.

Q. You have been in charge of the Motor Truck opera-

tions of the Texas and Pacific Motor Transport Com-
1245 pany which is the applicant in this case?

A. Yes, sir.

Q. The applicant is a Delaware corporation?

A. It is.

Q. And authorized to transact business in the states of Texas and Louisiana?

A. It is.

Q. What truck operating experience has the applicant had?

A. The applicant has been operating trucks since September of 1935 to separate points, one of which is between Shreveport, Louisiana and Cypress, Louisiana.

Q. Just a minute now, that Louisiana application was instituted in September, 1935?

A. Yes, sir.

Q. All right, go ahead.

A. And also in September 1935 along the Texas and Pacific Railway Company from Monahans, Texas to Lovington, New Mexico.

Q. Now then, had any operations been acquired by the applicant here heretofore?

A. Yes, sir.

Q. What are those operations?

A. The operation between Dallas and Big Springs, Texas, one of which was acquired—part of this operation was acquired from the Fort Worth Warehouse Company
which operated from Dallas to Abilene, Texas, and
1246 part of the line from the Johnson Motor Lines which was from Abilene to Big Springs.

Q. And that was approved by the Commission on June 11, 1937?

A. That is correct.

Q. And operations were instituted within 10 days thereafter?

A. They were.

Q. Referring to the map attached to the application, the first map attached which is Exhibit B-7-F-1. That map is a sketch map of the Texas and Pacific Railway and subsidiary companies?

A. It is.

Q. And on that map are shown the present motor carrier operations of this application?

A. It does show it, yes.

Q. Now as to the operations in the state of Louisiana other than the Shreveport-Cypress operations which were instituted in September 1935, please give the date those operations started and state whether or not interstate traffic is handled over those routes at the present time?

A. That operation started February 22nd between Cypress and New Orleans, including branch lines, on Louisiana state tonnage. We do not handle interstate tonnage.

Q. But you have filed certificate for authority, and the application has been heard, is that correct?

A. Yes, that is correct.

Q. Approximately how many truck miles have been operated by this applicant as a common carrier over the road so far?

1247 A. 1,215,348 miles, including July.

Q. How many units of equipment are operated at the present time?

A. 39 units.

Q. Can you state approximately what its experience has been as to cost per truck mile?

A. 9 cents per truck mile.

Q. Is that over the average, or is that for the last month, or what?

A. That is for the last month, and pretty well applies for the average, it might go 10 cents a truck mile if we have to buy tires or have unusual repairs or something of that nature.

Q. Now turn to the other map attached to the application which is Exhibit B-7-F-2. That is a map, is it not, showing the line of the Texas-Pacific Railway Company, the line of Southern Transportation Company and all of the line of the East Texas Motor Freight Lines at Tyler and points north?

A. That is correct.

Q. Now please state what part of the Southern Transportation Company operations are proposed to be acquired?

A. That portion that serves points on the Texas and Pacific Railway Company, namely: Dallas to include Wills Point, Texas, and from Gladewater, Texas to include Shreveport, Louisiana.

Q. Now, as to show segments of line, is it true that they touch and serve only the Texas and Pacific Railway points?

A. That is correct.

1248 Q. I don't think I asked you, but the applicant is a subsidiary of the Texas & Pacific Railway Company?

A. It is.

Q. It is wholly owned by the Texas & Pacific Railway Company?

A. That is correct.

Q. Now these are—please outline very briefly the respective facilities maintained at the points involved in this transaction by the Texas & Pacific Railway Company and those by the Southern Transportation Company?

A. Well, we will start at Dallas, Texas. Both companies maintain stations, agents, warehouse facilities, pick-up and delivery service and telephones. The Texas and Pacific Motor Transport Company maintains depots, agents, pick-up and delivery service and telephones at Mesquite.

Q. Let me interrupt you there. By pick-up and delivery service I take it you mean local draymen?

A. That is correct, a man stationed in the town and stays there permanently, performing services in the city limits for the general public. Shall I prepare each separately, or just mention the Texas & Pacific down and mention the other separately?

Q. Well, if you can give the aggregate of the towns it will be all right. In how many towns the Texas & Pacific have these facilities and how many of those towns the Southern Transportation?

A. There are 15 towns between Dallas and Shreveport including those two towns, and the Texas & Pacific
1249 maintains 15 agents, 15 depots and maintains 15 drayage concerns located in those towns and 12 Bell telephones that serve the public. The truck line maintains 6 agents, 6 depots, 6 local pick-up and delivery services and 6 telephones. In the smaller stations the truck lines do not maintain these facilities. They do maintain them at Dallas, Terrell, Wills Point, Longview, Marshall and Shreveport, but the smaller towns such as Waskom, Greenwood, Scottville, Hallsville, Willow Springs, Gladewater and Mesquite, that service is performed by the truck lines road trucks as they pass through.

Q. In other words, are the railroads superior in facilities chiefly at the smaller towns where the volume of L C L traffic isn't sufficient to warrant the maintenance of those facilities by truck lines?

A. That is correct.

Q. Now, are the facilities of the Texas & Pacific Railway Company available to the applicant in this case?

A. They are.

Q. Is it a fact that already there are agents and depots and local draymen which are the joint facilities of the railway company and the applicant?

A. They are.

Q. Now, what are the chief sources of traffic in the territory involved along this route?

A. The tonnage originates at Dallas, Fort Worth,
1250 Shreveport, Huston, Texarkana and points beyond.

Q. Such as St. Louis and Chicago?

A. Such as St. Louis, Memphis and Chicago.

Q. Now, the principal feature of the area intermediate in between Dallas and Shreveport is the East Texas Oil Field, I take it?

A. Yes, that is the principal industry, besides agricultural.

Q. Doesn't that field in size probably exceed any other field in the whole world?

A. That is the report.

Q. Now, what is the other industry in the territory from Dallas to Shreveport, I mean the intermediate points?

A. Considerable manufacturing. For example, plows. One of the largest plow manufacturers in the South I think is located at Longview, and the salt industry at Grand Saline, probably the largest in the section, in the South at least.

Q. That is a salt mine there?

A. Yes, shipping both carload and L C L, and there is considerable activity in certain seasons of the year in shipping cotton seed from Wills Point for planting purposes.

Q. That moves in L C L, does it not?

A. In practically all cases.

Q. And the seed will move, as well as the plows, to the other smaller points along the Texas & Pacific Railway Company and on this route?

1251 A. Yes, sir. There are also some furniture factories located along this route.

Q. Is it substantially true to say however, that the bulk of the traffic is traffic which moves into the territory such as equipment for oil fields and pipe lines and farms and for general stores and the like?

A. Yes, I think you will generally concede that it is a consuming territory.

Q. And the distributing points lie to the East and West and North as well as Houston I guess to the South?

A. Yes, Houston is very much of a factor.

Q. And are the wholesale houses in active competition?

A. Yes, sir.

Q. Now, compare the frequency of service to the territory by train as it now exists and that which is proposed to be instituted by the coordination of truck transportation with train transportation if this application be approved.

A. I think it would be better to take the local division separately.

Q. All right.

A. The towns are now served by the Texas and Pacific Railroad and the Texas and Pacific Motor Transport by rail service on a local freight train. It operates from Dallas to Mineola and is taken by sections, local divisions.

1252 That train operates out of Dallas on Mondays, Wednesdays and Fridays, returning from the other direction, from Mineola, on Tuesdays, Thursdays and Saturdays. We load cars for the local intermediate points not large enough to maintain or require a carload of merchandise out of Dallas on Monday. That car is carried on local traffic to Mineola. In that case, the closer stations such as Mesquite and Edgewood receive their freight reasonably early from 8 to 9 or 9:30 in the morning. On Tuesdays the car is carried by a through train to Mineola and worked back on the local.

Q. Wait just a moment, I think that you have started to outline how the freight was handled to Mineola, but I want the thing to be clear. The first instance was where the local freight train runs from Dallas to Mineola?

A. That is right, on Mondays. Now on Tuesdays, the merchandise is loaded in Dallas and carried to Mineola by a through freight train and worked back on the local. The towns close to Mineola receive their freight reasonably early, but the towns near Dallas receive their freight in the afternoon or too late to make deliveries. Say Mesquite, they would receive their freight from 7 to 8 o'clock at night, depending on the amount of work the local freight train had to do, and in certain seasons of the year, especially, the service is very irregular.

Q. Now let's take the other division.

A. Do you want to go on with the freight train altogether?

Q. Yes, let's get that straight.

1253 A. Now there is another local division between Mineola and Longview. The train departs from Mineola on Mondays, Wednesdays and Fridays and gets to Longview and returns the opposite days, but it doesn't get any freight for the points between Mineola and Longview as a rule, with the exception of one or two little stations. It lays over in Mineola 24 hours because we can't get the car to Longview in time to catch the local and work it back.

Q. In other words the operation of that is similar to the operation of the local between Dallas and Mineola except there is more of a delay as to shipments moving to or through Dallas and Fort Worth?

A. Yes. Now from Longview to Marshall a local operates every other day, serving say Hallsville I believe is the central point. That creates a 24 hour delay to haul the freight because that freight now is loaded in the Marshall car and can't be worked out in time to get the early morning local back out of Marshall so it stays in Marshall 24 hours and comes back the following day. Now, between Marshall and Shreveport there is no local, but the local comes back the other way. It operates a through train through Shreveport in order to handle perishable freight, but it goes through Shreveport and works back to Waskom, and Greenwood.

Q. In other words, there is a one-way local only?

1254 A. That is right, and a 24 hour delay in all cases, and on Dallas tonnage and on Shreveport tonnage operating the other way there is a 24 hour delay. Now, these locals operating this service have been furnishing that service for years. In other words, we can take care of the carload business fairly satisfactory, but every other day local service.

Q. It gives them on less than carload lots every other day service?

A. That is right. Now this proposed truck service will leave Dallas at the close of the day's business and serve those towns every day and the truck will arrive during the night, unload the tonnage in the depots and it will be available and will be delivered to the merchant when he opens his store the next morning.

Q. Now on that point, could you accurately say that a truck will leave from Dallas every night and give service to those towns, or will the traffic to the intermediate points be handled in the usual instance by train to establish set-out points and then put on trucks?

A. Probably I didn't explain that as thoroughly as I could, but the trucks will leave Dallas late in the evening and serve the towns intermediate between Dallas and Marshall, from Shreveport from set-out cars.

Q. Each town will have a double daily service?

A. That is right.

1255 Q. Now as to the regularity of the local train service and truck service, is it accurate to say that local trains are highly irregular as to the time of their arrival because of the varying amount of their work and that the trucks can be maintained on a fixed schedule?

A. Yes, not only on the amount of their work, but meeting high class trains, they have to yield the right-of-way to other first class trains and their schedules vary.

Q. Do your local trains operate on any fixed schedule?

A. No, they generally have a departing schedule from a terminal, but their other schedule depends upon the amount of work they have to do at intermediate stations, and so forth.

Q. What are your proposed train-truck transfer points? That is, where do you propose to change the traffic from trains to trucks and serve the intermediate points?

A. At Dallas, Mineola, Longview, Marshall and Shreveport, and as time goes on we may find one or two other stations involved that we can use to advantage, but that is the principal set-up at the present time.

Q. Are you proposing to acquire plates from the Railroad Commission of Texas to be put on the trucks authorizing the operation of twenty trucks?

A. That is correct.

Q. Do you intend to use all those trucks to handle your present volume of traffic?

A. No, we couldn't use them all with the present volume of traffic.

1256 Q. How many trucks do you intend to operate at the present time?

A. We will operate four trucks and probably one or two extra for emergency.

Q. And for peak loads?

A. Yes, sir, peak loads and things of that kind.

Q. On an average, how many truck miles do you propose to operate per day?

A. About 491 miles per day.

Q. Roughly speaking, 500 miles per day?

A. Yes, I would say 500.

Q. Assuming that the cost of operating those trucks is comparable in your experiences and your present experience as well, the cost will run around $50.00 per day?

A. Yes, approximately $50.00 per day.

Q. And at times of the peak traffic it will be a little more, say probably an average of $60.00 to $65.00 per day?

A. Yes, sir.

Q. Now just illustrate, to cite an example, of the physical handling of a shipment under your proposed plan.

A. We will load—

Q. Take a shipment first we will say moving from Houston to some point at which you don't now operate a set-out car on the route, and state how the traffic is handled now and how it will be handled?

A. Well, Houston tonnage would move through Longview.

1257 Q. Well then we won't take that example, we will say from Abilene?

A. All right, a shipment from Abilene will arrive in Dallas and be loaded in a box car that will be set out at Mineola. We will assume that the shipment is destined to—

Q. Say to Willow Springs.

A. Well, to Big Sandy or any of those towns, that shipment will be loaded in a car set out at Mineola, arriving at night on a through train; we will then transfer that tonnage to a truck during the night operating from Mineola to Longview or Marshall; probably Marshall, and this freight will be loaded in the warehouse of the Texas & Pacific as it passes through those towns.

Q. You mean that it will be taken off the trucks and be put into the depot as destination?

A. At Big Sandy, Gladewater or Willow Springs. We will take the Willow Springs, it will be loaded in the freight house at Willow Springs where it will be available for delivery when the store is ready to accept it at 7 o'clock in the morning.

Q. Now, that will be handled by the local agent or drayman, the same as if it came through on the train?

A. Yes, sir.

Q. And he will be there for the handling of claims and the dispensing of freight bills and quoting of rates and so forth, is that true?

A. Yes, sir, general station duties.

1258 Q. Now, let's take a shipment we will say from Shreveport to Terrell, how would that be handled under your proposed plan?

A. Shreveport to Terrell tonnage would be loaded at Longview and would there be placed on a truck operating out of Marshall to Dallas and moved into Terrell during the night and placed in the freight house, the Texas & Pacific freight house, where it is available for delivery by the local draymen, and handling by the local agent.

Q. Now you speak of a truck operating from Marshall to Dallas. What character of tonnage would there be which would move we will say from Dallas to Marshall the entire way by truck?

A. That would be only the tonnage that is offered after the departure of the train or tonnage that we failed to get in from Fort Worth to consolidate with the Dallas car for those set-out points.

Q. Clean-up tonnage, is that what it is called?

A. Clean-up tonnage, or clean-up truck we might call it.

Q. Now, the total amount of through freight handled by that truck would probably be 1500 or 2000 pounds?

A. It would be rather small.

Q. Well, that is approximately it?

A. Yes, sir.

Q. And then the same truck will also have some local tonnage we will say going from Dallas to points between Dallas and Mineola?

1259 A. Yes, sir.

Q. And when it gets up to Mineola he will be almost empty?

A. He should be.

Q. And then he will take the freight out of Mineola which has already moved by train and put it on and go on East to Longview where the same thing will be repeated?

A. Yes, and the same at Marshall.

Q. At Marshall he will make the connection with the truck that will operate from Shreveport to Marshall?

A. Yes, sir.

Q. Now by the proposed operation, will it be possible to improve your train service any?

A. Yes, both local and through trains.

Q. Outline just briefly how that will be done?

A. It will eliminate several stops on one or two trains which are now setting out cars at we will say Terrell and Wills Point and various other towns. In addition, it will eliminate the locals having to unload merchandise at the small stations.

Q. And having to switch up to the house for that purpose, is that true?

A. Yes, quite often the local doesn't have any work to do at a small station except unload the merchandise and he has to cut off and go into the house and it will enable him to get over the road and furnish better service to the industry in the smaller towns in that he will operate more
1260 regularly on time.

Q. Now the through trains that you mentioned, why is it a desirable thing to eliminate as far as possible the number of stops to be made by those trains?

A. Well, the two Eastbound trains are on advertised schedules, and both handle perishables. One of them has a very large movement of meats from the packers at Fort Worth going through Shreveport and the southern points, and it has to make schedules as advertised.

Q. Does it make connections with other lines at Shreveport?

A. That is right. The other train goes through to St. Louis.

Q. How far does it go on the Texas and Pacific?

A. It goes from here to Texarkana. It handles perishable freight, fruits, vegetables for Eastern points and it is on advertised schedule and it is necessary that it maintain its schedule or we pay claims for delays. Those two trains have been operating quite a number of years, and any unusual delay causes considerable claims and it is necessary that they do operate on time.

Q. Then you have to compete with other transcontinental routes in order to keep that business?

A. Yes, we have to maintain a schedule as advertised.

Q. Now, is there any other common carrier truck lines except Southern Transportation Company that serves or operates along the identical route or routes that we are proposing to acquire?

1261 A. The East Texas Motor Freight Lines will serve the entire territory. There are other truck lines.

Q. They have a parallel route with the one we are seeking to acquire?

A. Yes, sir.

Q. All right now, will you please name some of the principal other truck lines that serve various points on the route out of the distributing point although they do not operate over the particular highway or route here involved?

A. Well, the English Freight Lines operate a parallel portion of this line from Dallas, for example, to Grand Saline by way of Van. The Red Ball Truck Line operates

from Longview to Gladewater and up through Mount Pleasant.

Q. Well, now, where does he operate from?

A. He operates from Dallas and Houston by way of Athens and Jacksonville, a circuitous route, but he does go into some of these consuming points. He also serves Shreveport, Louisiana. The Southwestern Transportation Company operates out of the distributing point, Dallas, and serves Gladewater, Texas.

Q. That is the subsidiary of the Cotton Belt Railway Company?

A. That is correct.

Q. And it operates into substantially all the origin points?

A. Yes, sir. There may be one or two other truck lines out through there.

Q. Over varying routes, it is inconsequential what they are?

1262 A. Yes, sir.

Q. Now take the local shipment that originates in Dallas, that is bound for Terrell, how will that be handled?

A. It will be handled on the truck line after the close of the day's business.

Q. Now, there would be no occasion to put that on the train? It wouldn't be an economical operation?

A. No, it would not. That is the only way we have to serve that town.

Q. Then take another shipment from Dallas, say one which is destined to Willow Springs or Hallsville, and state how that will be hauled.

A. The Willow Springs shipment would be loaded in a car to Longview and would be handled today by switching going from Longview to Willow Springs sometime in the afternoon. If this application is granted, it will be handled by the truck line from Longview to Willow Springs.

Q. And will arrive early the succeeding day in time for the day's business?

A. That is right, early morning delivery.

Q. How many years' experience have you had in a traffic way, approximately?

A. Eighteen or twenty years.

Q. Now, outline some of the reasons why it is essential to give an early morning overnight service out of

1263 distributing points into the smaller towns particularly?

A. This day is a time of short buying and quick turnovers. You must of necessity, if you are going to stay in the merchandising business, see that your freight is moved from distributing centers after the close of the business day, and it must be a destination for early morning delivery within a distance of three to five hundred miles, and that applies to the large and the small stations as well.

Q. Now, is there any feasible way to render such a service as that wholly by railroad, for the amount of revenue involved and the amount of traffic moving to some of the smaller points?

A. There is not. This is absolutely the only way where a shipper and receiver can have the benefits of station facilities at the smaller stations and still receive the late departure from points of distribution and get the freight for early morning delivery. The larger stations are able to maintain and take a carload of freight. It wouldn't help him any because he gets his freight over night anyway, but it is the small stations that suffer.

Q. Now as to some of the larger places where they set out cars, some of those cars are operating with extremely light lading?

A. They are.

Q. And it would be far more economical to consolidate several of those cars into one for setting out at a
1264 central point and handling the freight from there back direct to the other points?

A. That is our thought and experience.

Q. Do you know approximately—well, I won't ask you that at this time.

Mr. LANCASTER: If the Joint Board please, I would like to offer as Exhibit, some information we were instructed to file here by the Commission, all of which is by way of a supplement to the financial information attached to the application. I have here four copies available, I don't know whether that will suffice or not. If it don't, I want to ask time to file some additional copies.

Exam. HIGGINS: Let me have two and one for the Reporter.

Mr. LANCASTER: I wish to offer first, as Exhibit No. 1 an income account and profit and loss statement of the Texas and Pacific Motor Transport Company, covering the two months, June and July, 1937.

Chairman TERRELL: It will be received and marked as Exhibit No. 1 unless there is some objection.

(Exhibit No. 1, Witness Huffman, received in evidence.)

Mr. LANCASTER: I wish to next offer as Exhibit No. 2, income account for the years 1935, 1936 and 7 months, January to July inclusive, 1937, of the Texas and Pacific Motor Transport Company.

Chairman TERRELL: It will be marked as Exhibit No. 2 and received.

1265 (Exhibit No. 2, witness Huffman, received in evidence.)

Mr. LANCASTER: I wish to offer Exhibit No. 3, a general balance statement of the Texas & Pacific Motor Transport Company as of the end of the years 1935, 1936 and as of July 31, 1937.

Chairman TERRELL: It will be received.

(Exhibit No. 3, witness Huffman, received in evidence.)

Mr. LANCASTER: I next offer as Exhibit No. 4, which consists of two pages, income account of the Texas & Pacific Railway Company for the period January 1st to July 1st and—No, that is in error. This will be two different exhibits. No. 4 is an income account of the Texas & Pacific Transport Company for the period January 1st to December 31st in the years 1935 and 1936.

Chairman TERRELL: Exhibit No. 4 will be received.

(Exhibit No. 4, Witness Huffman, received in evidence.)

Mr. LANCASTER: I next offer Exhibit No. 5, income account of the Texas & Pacific Railway Company for the month of July, both in 1936 and 1937 and for the period January 1st to July 31, for the years 1936 and 1937.

Chairman TERRELL: It will be received.

(Exhibit No. 5, Witness Huffman, received in evidence.)

Mr. LANCASTER: I now offer as Exhibit No. 6, a general balance sheet statement of the Texas & Pacific Railway Company at the close of the years 1935 and 1936, and

1266 July 31st, 1937, and I ask that Exhibit 6 be received.

Chairman TERRELL: It will be received and marked as Exhibit No. 6.

(Exhibit No. 6, Witness Huffman, received in evidence.)

Mr. LANCASTER: I desire to state that the Exhibits which I have just offered were prepared by the General Auditor of the applicant and the Texas & Pacific Railway Company.

I believe that is all for Mr. Huffman at this time.

Chairman TERRELL: Any more questions, gentlemen?

Q. (By Examiner HIGGINS) Mr. Huffman, what is the route mileage of the Transport operations, approximately?

A. Of the existing operation?

Q. Yes.

A. About 792 miles, but they are separate portions, they are not connected up.

Q. And how much mileage is involved in the proposed acquisition?

A. About 196 miles.

Q. 196?

A. Yes, sir.

Q (Mr. LANCASTER) Just a minute, I think it may be there is some confusion. You are speaking of the two totals, of the two segments of the line or are you speaking of the distance between Dallas and Shreveport?

A. I am speaking of between Dallas and Shreveport.

Q. (By Exam. HIGGINS) I didn't have that in
1267 mind, I mean between Dallas and Wills Point and between Gladewater and Shreveport.

A. I will get you that exactly here. From Dallas to Wills Point 50 miles. From Gladewater to Marshall 36 miles. From Marshall to Shreveport about 34 miles, about 109 miles in all.

Q. About 109 miles, is that the total?

A. Yes, sir.

Q. And for that you propose to pay $40,000.00?

A. Yes, sir.

Q. How many motor vehicles did the applicant operate on the day of the contract? I don't mean units, I mean motor vehicles. As I recall you said 39 units. I don't mean units, I mean motor vehicles.

Q. (Mr. LANCASTER) Of what do your 39 units consist?

A. Tractors and trailers, 38 van type trailers and I have got 38 tractors and I have got one stake body job.

Q. (Mr. LANCASTER) I think the Examiner wants to know what you propose to pay for the operating rights.

A. We proposed to pay $40,000.00.

Q. (By Mr. LANCASTER) And on certain contingencies are you supposed to pay $50,000.00?

A. That is right.

Q. (By Exam. HIGGINS) And that contingency is that if the applicant succeeds in securing authorization to operate between Texarkana to Marshall, Texas from the Interstate Commerce Commission and the Railroad Commis-
1268 sion of Texas, and commences operations within 3 years of the date of the agreement it will immediately pay the vendor an additional sum of $10,000.00, is that what you have in mind?

A. That is correct.

Q. Is it proposed to fill in that gap at some future time by asking for authority from the Interstate Commerce Commission that you move interstate thereover, or from the Railroad Commission of Texas with respect to intrastate operations, so that you will have an over all operation between Dallas and Shreveport?

A. We have already had a hearing from the Railroad Commission of Texas on that segment, and we propose to file an application with the Interstate Commerce Commission.

Q. (By Mr. Lancaster) In connection with that, Mr. Huffman, is there any truck line which operates along the highway paralleling the Texas & Pacific Railway Company between Wills Point and Gladewater?

A. There is not.

Q. So it would be impossible to acquire the line in there?

A. Yes, sir.

Q. I think the only line operating over a portion of the route is the English Motor Freight Lines which run
1269 between Grand Saline and Wills Point via Van, although I believe he serves Edgewood.

Chairman Terrell: How does that run? From Van to Gladewater?

Mr. Lancaster: It runs up to Edgewood and then back through Fruitvale to Van.

Q. (By Exam. Higgins) Now, if you ultimately receive authority to operate between Wills Point and Gladewater and if this pending application is approved, you, and I mean by you the applicant, will then be the only through motor operator between Dallas and Shreveport, will it not?

A. No, sir.

Q. Who else will be in there?

A. East Texas Motor Lines.

Q. Over all the way, on the same identical highways?

A. No, I think they have filed, or have contemplated filing with the Commission authority to operate from Wills Point to Gladewater over the same route that we propose. That is, they propose to run through there with closed doors. We will be the only line, the Texas & Pacific Motor Transport, operating between Wills Point and Gladewater. They will pass over that route with closed doors, but at the present time there is nobody serving that, not any of the truck lines.

Q. (By Mr. Lancaster) Now, Mr. Huffman, isn't it a fact that other carriers serve particular points in there but not over that route?

1270 A. Yes, but we have explained that point. From Wills Point to Grand Saline, and there is a truck line running from Tyler and across to Mineola and up to some little town north.

Q. (By Exam. Higgins) Well, that is an intersecting operation?

A. Yes, sir.

Q. I refer to paralleling operations over the same highway.

A. The East Texas Motor Line will parallel the Texas & Pacific Railway in this territory the same as the Texas & Pacific Motor Transport Company except they will propose to have closed doors from Wills Point to Gladewater. I don't know whether that application has been filed or not but I understand that it was.

Mr. Calloway: Might we just state what the situation is with reference to the East Texas Motor Freight Lines?

Exam. Higgins: I think it might be well to put it in at this time.

Mr. Calloway: If you will kindly refer to the map, Exhibit B-7-F, the East Texas now operates from Dallas to Shreveport by way of the Yellow line shown on that Exhibit. That is its present operation and in addition we have filed with the Railroad Commission, and propose to file later an application to operate paralleling the Texas & Pacific between Wills Point and Gladewater with closed doors, with certain trucks. In other words, we will not abandon our present operations on the Yellow line, but for transportation economies we will seek permission to go over that route with closed doors.

1271 Exam. Higgins: Thank you, Mr. Calloway.

Q. (By Exam. Higgins) Now, as I understand your proposed rail-truck coordination, what you are really doing aside from clean-up service is to handle direct by truck. You are really substituting part of your rail service with truck service from the concentration to set-out points beyond?

A. On the merchandise, yes, in serving those small towns that is correct.

Q. For instance, take your rail movement from Dallas as well as say from Dallas to Mineola and from Mineola you will then make delivery by truck to Hoard, Hawkins, Big Sandy, Wilkins, Gladewater and Willow Springs?

A. That is correct.

Q. And then in other instances your car will move from Dallas to Longview; instead of a switch engine service for delivery to Willow Springs it will be trucked out?

A. That is correct.

Q. And I assume you will have a similar service in the reverse direction, interstate traffic originating at Shreveport and destined for let's say points between Dallas and Wills Point?

A. That would be such a small factor that we would move by truck.

Q. Direct by truck?

A. It will move by railroad to Longview and then move out by truck from Longview.

1272 Q. What is the distance from Longview to Wills Point?

A. About 65 miles.

Q. And in your opinion do you think that would be a much more economical movement than to handle by train?

A. Not only my opinion but from my experience.

Mr. LANCASTER: We will have another witness on that, Mr. Examiner.

Q. (By Exam. HIGGINS) Well, those are typical examples of how you propose to operate?

A. That is correct.

Q. Did you give the number of set-out or concentration points?

A. I did that, but I will do it again.

Q. I don't want you to repeat it if you have covered all of them?

A. Yes, we did. As I said, as time goes on we may add other set-out points.

Q. In your opinon do you think the $40,000.00 expenditure for rights which will permit you to perform this service, if the application is finally approved, will probably represent or be equivalent to the saving that you will make if you had to use the train exclusively?

A. Yes, sir. We will have figures to substantiate that.

Q. (By Mr. LANCASTER) On the point inquired about on the $10,000.00 to be paid you if you acquire the route from Marshall to Texarkana, the proposed route over

1273 which you contemplate seeking authority between Marshall and Texarkana to operate, would parallel the route of the East Texas Motor Freight Lines which most closely adjoins the line of the Texas & Pacific Railway Company?

A. That is correct.

Q. Now what is the thought of the Southern Transportation Company and the East Texas Motor Freight Lines which at the time you made your deal with Southern Trans-

portation Company, had in effect an option on Southern Transportation Company that if you were successful in paralleling them up over this other portion of the route that that would enable you to better compete, not only along the route from Marshall to Texarkana but also over the route from Dallas to Shreveport?

A. That is correct.

Q. In other words, the line of the Texas & Pacific Railway Company, like the line of the East Texas Motor Freight Lines, runs from Dallas to Marshall and there forks, the southerly fork running to Shreveport and the other to Texarkana?

A. That is correct.

Q. And there is a substantial movement of traffic between Shreveport and Texarkana and between the points named to points intermediate between them?

A. Yes, sir.

Q. Is there at the present time, in actuality, an oil field development of considerable magnitude in the territory between Texas, Arkansas and Shreveport, Louisiana?

1274

A. There is.

Q. And there is a prospect that it will be greatly extended?

A. Yes, sir.

Q. With consequent considerable increases in traffic at the intermediate points?

A. Yes, that is quite a factor in that territory now.

Q. Have you found that aflexible coordinated truck service is better adapted than any other service for handling the L. C. L. needs under such circumstances?

A. We have.

Q. That is, it is better adapted from the Transportation Company's point of view because it is more economical and also better from the standpoint of the public because of improved service?

A. That is right.

Q. Mr. Huffman, is it a fact that the basis outlined in the contract of sale, a copy of which is attached to the application, is the only basis upon which a trade could be made between the applicant on the one hand and the Southern Transportation Company and the East Texas Motor Freight Lines on the other?

A. Yes, sir.

Q. It is what you might call an arm's length trade, is that so?

A. Yes, sir.

Mr. LANCASTER: I think that's all.

1275 Chairman TERRELL: I want to find out, Mr. Huffman, just exactly what you are buying from the Southern Transportation Company.

The WITNESS: I am buying that portion of the line from the Southern Transportation Company operating from Dallas to Wills Point, and from Gladewater, Texas to Shreveport, Louisiana.

Chairman TERRELL: You are not buying anything through there?

The WITNESS: No, sir, we have an application before your Body to operate between Wills Point and Gladewater, Texas.

Chairman TERRELL: Now then, if this is approved by the Interstate Commerce Commission and the Texas Railroad Commission, do you propose to run from Dallas to Wills Point by truck?

The WITNESS: Yes.

Chairman TERRELL: Instead of hauling by train?

The WITNESS: Yes, those Wills Point hauls are very light. They won't average over 2500 pounds a day.

Chairman TERRELL: And you will serve all of those intermediate points between Wills Point and Dallas?

The WITNESS: Yes, sir.

Chairman TERRELL: Then, how do you propose to get your freight out here from Gladewater?

The WITNESS: We will set that car out at Mineola.

Chairman TERRELL: You mean you will run a car from Dallas to Mineola?

The WITNESS: Yes, sir.

1276 Chairman TERRELL: Then how would you get the freight to intermediate points?

The WITNESS: Load it on trucks at night.

Chairman TERRELL: If you don't have a permit how are you going to do it?

The WITNESS: We are making application for that.

Chairman TERRELL: Well now, when you do that do you propose to unload your car at Mineola and then take your truck and carry the freight back to points in between Wills Point and Mineola or would you carry it out of Wills Point?

The WITNESS: We will carry it out of Dallas or probably we will set out cars at Wills Point.

Chairman TERRELL: And then from Mineola you will come on to Gladewater?

The WITNESS: Yes, on into Longview.

Chairman TERRELL: And all intermediate points?

The WITNESS: Yes, sir.

Chairman TERRELL: Now then, you propose to haul freight delivered to you by the Texas & Pacific Railway Company?

The WITNESS: Yes, sir.

Chairman TERRELL: Do you propose to haul freight delivered to you by other connecting companies, I mean truck lines?

The WITNESS: No, sir.

Chairman TERRELL: You won't receive any from other truck lines?

The WITNESS: No, sir we won't receive any unless
1277 there is a demand and necessity for it. There will be other truck lines—there will be other competitors in there.

Q. (By Mr. LANCASTER) Mr. Huffman, if the applicant institutes the truck operation that he proposes to under this application, and under the other application filed, if as to its truck operations it is required to interchange by any competent authority it will do so?

A. Yes, sir.

Chairman TERRELL: Then your testimony is not like you first stated?

The WITNESS: Yes, my testimony was to this effect. That at the present time we do not anticipate to interchange with other truck lines, but if the authorities demanded that we do so we will interchange with other companies.

Mr. LANCASTER: Our position is this, just in so far as we are engaged in truck operations we are willing to establish any interchanges that the public needs or convenience may call for. As of the present time we are not prepared and we don't think it will be in the public interest for us to interchange freight between our rail operations and other truck lines because that would involve an invasion of the territory of other established carriers, and at the present time I don't think that that is the desirable thing and it is my understanding that regular authorities in general are of the same opinion.

Chairman TERRELL: I believe we have some addi-
1278 tional appearances.

Mr. SAYERS: Reagan Sayers of Rawlings and Sayers, appearing for H. E. English, doing business as Red Ball Motor Freight Lines. It was my understanding that this case would be called second on the docket and for that reason I was not here when it was first called. However, the petitioner, H. E. English, doing business as Red Ball Motor Freight Line does have a material interest in this

application in that he operates in the same territory and would therefore be affected by this application very materially. I hand the Reporter an original verified and three copies of our petition to intervene and request the Joint Board to grant same.

Chairman TERRELL: Intervention will be permitted.

Mr. BYARS: Ed Byars, I should have stated my appearance sooner. I got in after the witness started testifying. My name is Ed P. Byars, 910 Commerce Street, Fort Worth, Texas, representing the Fort Worth Freight Bureau and the Fort Worth Chamber of Commerce in support of the application. I should like to ask Mr. Huffman just one or two questions about Fort Worth's interest in this case, and how it is affected.

Q. (By Mr. BYARS) To what points on your line east of Dallas do you now have set-out cars from Dallas and Fort Worth?

A. From Fort Worth we maintain set-out cars to Kilgore, Longview and Marshall and from Dallas we
1279 maintain set-out cars at Wills Point, Terrell, Mineola, Gladewater, Longview and Marshall.

Q. Will you truck merchandise freight out of Fort Worth?

A. Yes, sir.

Q. To points how far east?

A. We will bring it to Dallas and it will be consolidated with tonnage out of here. Fort Worth will receive the same service as Dallas shippers.

Q. Then Fort Worth will be benefited equally along with Dallas in obtaining quicker delivery of merchandise freight on your line?

A. Yes, sir.

Mr. BYARS: That is all.

Cross Examination:

Q. (By Mr. SAYERS) Mr. Huffman, the Texas & Pacific Motor Transport Company is a corporation?

A. It is.

Q. Organized under the laws of what state?

A. Delaware.

Q. The Texas & Pacific Railway Company is the parent corporation?

A. It is.

Q. It is organized under the laws of what state?

Mr. LANCASTER: It is organized under the laws of the United States, a Federal corporation.

Q. (By Mr. SAYERS) Then the applicant corpora-
1280 tion here is not the same corporation as the Texas & Pacific Railway Company?

A. It is not.

Q. What is the arrangement between the Texas & Pacific Railway Company and the Texas & Pacific Transport Company relating to the management of affairs? I mean by that, does the Transport Company pay a certain percentage of its profits to the Railway Company?

A. It does.

Q. Is the ownership the same?

A. Well, the Texas & Pacific Railway Company owns the Texas & Pacific Motor Transport Company.

Q. Now you state that you are going to have set-out cars at Marshall?

A. That is correct.

Q. Do you intend to run a truck through from Shreveport to Marshall?

A. We do.

Q. That truck will move direct through on to Gladewater then, or will it stop at Marshall?

A. We will stop at Marshall.

Q. Then another truck will move West out of Marshall into Gladewater or from Gladewater into Marshall?

A. It will.

Q. How far is it from Marshall to Shreveport?

A. About 25 miles.

1281 Q. And from Gladewater to Marshall?

A. About 36 miles.

Q. Now you also propose to operate a truck from Dallas to Wills Point?

A. Yes, sir.

Q. And how far is it from Dallas to Wills Point?

A. About 60 miles.

Q. In other words, the truck operations will take off the train operations on that route? I mean, the train will then cease serving?

A. It will not.

Q. It will not cease serving those points?

A. It will cease serving those points but will not cease operations.

Q. I understand that, but it will cease serving those points that the truck line serves?

A. No, sir. I can explain that. We will continue to have set-out cars at Mineola, Longview and Marshall, and we will also continue to serve those towns by truck line so

we will not cease the serving of them by railroad but we will cease serving some smaller towns like Willow Springs, Hawkins, Big Sandy, Edgewood to a great extent by our railroad and mostly serve them in l. c. l. freight by the truck lines.

Q. (By Mr. LANCASTER) Are you confining all this now to l. c. l. freight?

1282 A. Sure.

Q. (By Mr. SAYERS) Now, Mr. Huffman, at the present time your principal service to those smaller towns is peddlar car service, is it not?

A. That is correct.

Q. Do you propose to do anything else to supplement or rather to take the place of peddlar car service by truck lines?

A. That is the principal purpose of it.

Q. That is exactly what I am trying to get to. What, besides taking the place of that peddlar car service, does that truck line service propose to do?

A. I can't think of anything else right this minute, probably we might handle Express or United States Mail, but at this particular time I cannot think of anything else.

Q. Principally peddlar cars?

A. That is right, l. c. l. freight to the smaller stations.

Mr. SAYERS: I believe that is all.

Mr. CALLOWAY: If the Joint Board please, with reference to certain of the testimony concerning the East Texas Freight Lines, may I make a statement that I think will clarify their situation for the Board?

Chairman TERRELL: You may proceed.

Mr. CALLOWAY: It will be noted that in the statement of Mr. Huffman certain references have been made to the East Texas Motor Freight Line, and it will further

1283 be noted that the East Texas Motor Freight Line is a party to the contract between Southern and the Texas-Pacific Transport Company. In order that the Board may understand, I would like to direct your particular attention to those portions which set out the reason for that, and that at the time that the contract between the East Texas Motor Transport Company, I mean the Texas & Pacific Motor Transport Company and the Southern Transportation Company was made, Southern Transportation Company was already under a contract with the East Texas, subject to the approval of the Interstate Commerce Commission and the Railroad Commission

of Texas, to merge their operations and East Texas refused to release Southern Transportation Company from that contract unless certain things were done, and for that reason it was necessary for East Texas to be a party of contract of purchase and sale of the other two companies. Now, that has particular bearing on that proposition of the $10,000.00 additional payment, and the reason for all of that is we won't release Southern from the contract unless certain things were agreed to.

Exam. HIGGINS: The routes between Dallas and Wills Point and between Gladewater and Shreveport will have to be released from the proposed merger in MC-F-273 of the East Texas Motor and the Southern Transportation Company in order to permit the sale to the applicant in this application, and that release will be forthcoming?

Mr. CALLOWAY: Oh yes, it has already been filed.

1284 Exam. HIGGINS: Now, in that same connection is the Texas and Pacific Motor Transport Company paying anything in addition to the $40,000.00 for that release?

Mr. CALLOWAY: Not for the release of the merger.

Exam. HIGGINS: The release of these routes from the merger?

Mr. CALLOWAY: No additional agreement of any kind except for the $10,000.00 specifically provided for.

Exam. HIGGINS: Now, I understood you to say, Mr. Huffman, that you are now rendering train service between Dallas and Wills Point. Do you propose to substitute that service with truck service if this application is approved?

The WITNESS: No, sir, the train will continue to operate.

Exam. HIGGINS: Will the train continue to operate as far as Mineola?

The WITNESS: That's right.

Exam. HIGGINS: But at any rate you will be substituting truck service for train service between Dallas and Wills Point?

The WITNESS: Auxiliary service on merchandise, but the train will continue to operate.

Exam. HIGGINS: But that train is going to operate out to the set-out point at Mineola?

The WITNESS: Yes, sir.

Exam. HIGGINS: Is there also train service now between Shreveport and Longview?

The WITNESS: Yes, sir.

1285 Exam. HIGGINS: And do you intend to substitute that service with truck service between the same points?

The WITNESS: No, sir, there will be a supplementary service but not a substitute service. In other words, the train service, Mr. Examiner, will not be interrupted.

Exam. HIGGINS: I don't mean interrupted, I mean whether or not you are going to render service by truck between we will say Shreveport and Longview?

The WITNESS: Yes, but only as a clean-up truck, because the tonnage will move by railroad as at present in set-out cars. The same applies to Marshall, Texas.

Exam. HIGGINS: And where is that set-out point going to be on Westbound tonnage out of Shreveport?

The WITNESS: Marshall and Longview. Shreveport is not much of a factor in distribution beyond Big Sandy, extremely in East Texas.

Exam. HIGGINS: Is someone else going into the matter of the relative costs?

Mr. LANCASTER: Yes, sir.

Q. (By Mr. KIDWELL) Mr. Huffman, these trains also handle carload freight, and the trains will still run and handle carload freight, won't they?

A. That is right.

Q. But by your proposed plan they will handle—the truck will handle the merchandise freight between
1286 the set-out points instead of the train handling that merchandise freight?

A. That is correct.

Chairman TERRELL: What kind of a certificate has the East Texas Motor Freight Line from Dallas to Shreveport?

The WITNESS: I believe you will have to ask Mr. Calloway about that.

Chairman TERRELL: Mr. Calloway, what kind of a certificate have you?

Mr. CALLOWAY: What do you mean?

Chairman TERRELL: Are there several certificates?

Mr. CALLOWAY: We have several different certificates.

Chairman TERRELL: Have you got a certificate that runs from Dallas to Wills Point? The point I am trying to make is, you are selling a portion of your certificate I understand?

Mr. CALLOWAY: We are not selling anything, the Southern Transportation Company is. The Southern has only one certificate.

Exam. HIGGINS: Mr. Huffman, do you know approximately how many motor vehicles are operated by the Southern Transportation Company between Dallas and Wills Point and Gladewater?

The WITNESS: Only from just a general knowledge of the situation, some ten or something like that.

Exam. HIGGINS: Did I understand you to say it was going to be necessary for the Texas & Pacific Transport Company to purchase about 20 new vehicles?

The WITNESS: No, sir.

1287 Exam. HIGGINS: What was it you said about purchasing new vehicles?

The WITNESS: The contract permits us to purchase the plates of the Southern Transportation Company, which totals 20, but we will not need that many. We only propose to operate four trucks, but probably under the present tonnage we will probably buy one or two more for emergency.

Exam. HIGGINS: You are in possession of those trucks now?

The WITNESS: No, sir.

Exam. HIGGINS: How much will they cost?

The WITNESS: About $2500.00 each. That is, the trailer and tractor together.

Exam. HIGGINS: That will be about $10,000.00 additional, will it not?

The WITNESS: Yes, sir.

Exam. HIGGINS: I assume it is well understood that the applicant is buying and the vendor is selling whatever grandfather rights come down?

Mr. LANCASTER: Yes, sir, that is so stated in the contract.

Chairman TERRELL: Who now owns the Southern Transportation Company?

Mr. CALLOWAY: Mr. R. H. Crim and R. H. Laird. They own the common stock.

May I ask a question that may be a help in facilitating this hearing? I think it is already apparent that

1288 this particular matter and the one to follow are somewhat inter-related. I wonder if by mutual consent the record in each case might be considered in the other case?

Chairman TERRELL: What other case does he refer to?

Mr. CALLOWAY: The application of the East Texas Motor Freight Lines to merge with the Southern Transportation Company. You will have one different member of this Board. One member of this Board is off and another one on, but I assume by agreement of the parties that the record in the two cases could be considered one with the other. The reason I am making that suggestion is in the interest of saving a lot of time on cross-examination if

that might be understood, and I can't see that it would harm anyone.

Chairman TERRELL: I suppose it will be all right. It will be with me.

Mr. LANCASTER: As far as the applicant is concerned, we are entirely agreeable to that.

Exam. HIGGINS: Would there be any special benefit except to show that some of these routes which the applicant proposes to buy in this case and which might be included in the merger of No. 273 could be released from that matter? I don't know what the ultimate result of these applications is liable to be, but as you know, were we to incorporate something by reference, it might be incumbent upon you at some later time.

Mr. CALLOWAY: I had probably better withdraw the suggestion.

1289 Q. (By Mr. SAYERS) Mr. Huffman, upon what are your rates for the Texas & Pacific Motor Transport Company based? Upon the cost of motor equipment or upon the cost of rail operations?

A. What rates do you have reference to?

Q. I am talking about the rates of the Texas and Pacific Motor Transport Company?

A. Those rates are promulgated by the regulatory bodies, the Railroad Commission of Texas and the Interstate Commerce Commission.

Q. I am talking about your motor rates that you have filed, what are they based upon?

A. The rates we have filed are based upon the rail rates. Now we haven't filed any rates that I know of in this particular case, but our rates, the Texas & Pacific Transport rates are the same as the rail rates.

Q. In other words, they are based upon the cost of operations of rail?

A. Yes, sir.

Q. And it is on the cost of rail operations that your rates are determined?

A. Yes, sir.

Mr. LANCASTER: Mr. Huffman, are your rates based on cost?

The WITNESS: They are based on competition and fixed by the regulatory bodies.

Chairman TERRELL: They are fixed by the Texas
1290 Railroad Commission?

The WITNESS: Yes, sir.

Chairman TERRELL: And do you observe them?

The WITNESS: Yes, sir.

Chairman TERRELL: We will take a 5 minute recess.

After recess.

Mr. LANCASTER: We will call Mr. Long.

W. T. LONG, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Long, I don't know whether you have been sworn or not?

A. Yes, I have.

Q. State your full name, please sir.

A. W. T. Long.

Q. What is your address and occupation, Mr. Long?

A. Dallas, Texas; I am Superintendent of Transportation of the Texas & Pacific Railway.

Q. As such, what are your duties?

A. Supervision in connection with the movement of freight and passenger train schedules, furnishing freight equipment for loading, and passenger equipment.

Q. Freight transportation is under your direction and supervision?

A. Yes, and also I have supervision of freight loss and damage claims.

1291 Q. Mr. Long, have you prepared a statement in connection with this matter?

A. Yes, I have.

Q. I will ask you to please make that statement.

A. I am familiar with—

Mr. SAYERS: Just a minute! It seems to me that a prepared statement is to be used. If the witness is not competent to testify from his own knowledge on the matter I don't think the witness is competent to testify from a prepared statement.

Mr. LANCASTER: The witness himself prepared the statement.

Mr. SAYERS: If the statement is a financial statement, I have no objections.

Chairman TERRELL: Couldn't he read it, Mr. Sayers, slow enough that you could understand it?

Mr. SAYERS: If I can follow him I will withdraw my objection, and will ask that I be permitted to object to certain statements that he may make.

Chairman TERRELL: Just read it slow, Mr. Long, and if you want to stop him, Mr. Sayers, you go ahead and stop him and make any objection you want to.

Mr. LANCASTER: Go ahead, Mr. Long.

The WITNESS: I am familiar with the plan of The Texas and Pacific Motor Transport Company to purchase operating rights of Southern Transportation Company and
1292 I am familiar with the coordinated rail truck operations it is proposed to inaugurate upon consummation of such plan.

By the proposed operation The Texas and Pacific Railway Company can eliminate the daily loading of 23 cars. The points at which such cars are presently loaded and the miles such cars are at present transporting merchandise under load are as follows:

Dallas	7	Cars	— 632	Loaded	Car	Miles
Fort Worth	3	"	— 500	"	"	"
Mineola	2	"	— 120	"	"	"
Longview	5	"	— 325	"	"	"
Marshall	2	"	— 60	"	"	"
Shreveport	2	"	— 120	"	"	"
Texarkana	2	"	— 193	"	"	"
Total	23	"	— 1950	"	"	"

The average detention of cars employed in merchandise loading,—that is the time elapsing between selection of car for loading and its availability for another load is four days. It is therefore seen that by eliminating the daily loading of 23 cars The Texas and Pacific Railway Company will each day save 92 car days. Stated another way, it would require The Texas and Pacific Railway Company to constantly possess a total of 92 cars to handle the daily loading of 23 merchandise cars.

Computing the cost of possessing a car one day at the accepted figure of $1.00, it is seen that through the
1293 elimination of the loading of the cars in question there will follow a saving of $92.00 a day.

Seven of the cars referred to are loaded at Dallas. At such point the outbound freight house is situated in West Dallas and the terminal and train yard in East Dallas. To place cars for loading they must be handled around the Dallas Belt Line, a distance of 7.8 miles. After loading, such cars being eastbound cars, would be required to retraverse the Dallas Belt Line. As the cost per car assessed by the owners of such line is 7¢, it is seen that the elimination of the 7 cars in question will result in a saving of Belt Line charges of 98 cents per day. In addition there would be saved the handling of such cars at Dallas for which our average costs during the month of July, 1937, were 72.34 cents per car. The terminal cost on 7 cars is therefore $5.06 plus 98 cents or $6.04 per day.

At Fort Worth 3 cars per day will be saved, and as the average cost for handling at such point is 40.48 cents per car, the daily saving at such point will be $1.21.

At Longview 5 cars per day will be saved, and in connection therewith will be saved terminal costs of 35.92 cents per car which will average $1.92 per day.

At Marshall, Texas, 2 cars will be saved, and as the average terminal costs per car is 29.23 cents, a daily saving of $0.58 results.

1294 In similar manner the daily saving of 2 cars at Shreveport will save 84 cents per day in terminal costs and at Texarkana the daily saving of 2 cars will save 46 cents per day.

The terminal car costs referred to are the average actual out of pocket costs of handling cars and were arrived at by dividing the total terminal costs by the number of cars handled through a terminal. Since a majority of the cars handled through the terminals,—an overwhelming majority at most of the points named, are cars which arrive and depart without any handling save the break-up and make-up of trains, it is manifest that in applying to the cars to be saved the average costs, we have underestimated the prospective savings, since the cars to be eliminated must in each instance be switched through the most congested terminal districts twice and must be switched to and spotted at the freight houses.

Mr. Sayers: I am going to object to any more testimony if the rest of the testimony relates to that, because it is obvious that it speaks of the saving of the Texas & Pacific Railway Company, a separate and distinct company from the applicant here and for that reason I object to any further testimony in that regard.

Mr. Lancaster: If I may say so, under Section 213, under the proviso under which this application falls, there are only two issues, and one issue as applied to this case

1295 is whether the transaction will promote the public interest by enabling such carrier to use service by motor vehicle to public advantage in its operation. That is the operation of the railroad.

Chairman Terrell: Objection overruled.

Mr. Sayers: Note our exception.

The Witness (Continuing): Totaling the per diem and terminal costs I have mentioned gives us a daily saving a figure of $101.93, to which should be added the presently incurred expense of hauling such cars 1.950 loaded miles.

Exact costs are not readily ascertainable, but by applying the figure of 5 cents per car mile, which is the rate charged by one railroad for handling empty equipment of another, (Ass'n. of Amer. R. R.s. Rule 5) and which is predicated upon cost, as a reciprocal proposition, it results that the daily saving in loaded car miles would be $97.50.

Because it is difficult to ascertain without an elaborate and expensive cost study, I am not prepared to approximate other savings which will result from, increased ton miles per train hour, reduced main line interference due to decreased destination switching and unloading from local trains, improved net ton-gross ton ratio, etc.; it is my opinion, however, that resultant savings from these items will be substantial.

Mr. SAYERS: I move to strike that last statement, "it is my opinion, however, that resultant savings from these items will be substantial."

Mr. LANCASTER: He can qualify the last statement. He is qualified and is an expert and his opinion might be
1296 of benefit to the Board and to the Commission.

Chairman TERRELL: I will overrule the objection.

Mr. SAYERS: Note our exception.

The WITNESS (Continuing): I further wish to point out that the 23 cars we are now loading each day in merchandise service and which can be released through the proposed coordinated operations, are needed by our company for other loading at the present time and the prospects are that the need will greatly increase, particularly when the coming cotton crop begins to move. Such cars are presently needed for the loading of lumber, salt and other commodities in the territory immediately adjoining the origins where such cars are loaded with merchandise. Only this week The Texas and Pacific Railway Company placed an order for 500 box cars with an option for 500 additional ones. The cost of such cars is approximately $3,000.00 each,—the cost of 500 approximating $1,500,000.00. The number of additional cars which will be required by this company will be directly affected by how efficiently it can utilize the present equipment. As heretofore pointed out, the present handling of merchandise traffic requires 92 more cars than would be required upon consummation of the proposed acquisition and if it is necessary for this company to purchase 92 more cars, the cost would be $276,000.00.

(Discussion off the record.)

Mr. SAYERS: I object to the witness reading the
1297 last paragraph of his written statement. It is purely hearsay because the basis is not shown and that man is not competent to testify as to the conclusion. He didn't the survey, and that is a matter that should be submitted with facts, and you are submitting the conclusion of a man that is not even present.

Mr. LANCASTER: We are submitting this not merely to prove the truth of the statement of Mr. Symes, but to prove he made the statement. We think his position will speak for himself. We have already offered the independent estimate of this gentleman and he has stated the fact that we are having to buy cars and more cars, and now we are offering this not to prove the truth of Mr. Symes statement, but the mere fact that he said that and that is not hearsay.

Mr. SAYERS: If it please the Joint Board, Mr. Symes is not here present for cross-examination. I don't know how he reached that conclusion of what the basis of his figures were.

Chairman TERRELL: The objection will be sustained.

Mr. LANCASTER: Note our exception.

Q. (By Mr. LANCASTER) Mr. Long, do you know whether or not a survey has been made with respect to the capacity of the freight equipment of the railroads of the United States to handle the traffic which is in prospect for the year 1937?

A. I do.

Q. Do you know what results of such survey were?

Mr. SAYERS: Just a minute! Did you make the survey?

1298 The WITNESS: I furnished some of the data for it.

Mr. SAYERS: But you did not make the survey?

The WITNESS: I did not.

Mr. SAYERS: I object.

Chairman TERRELL: What was that survey?

The WITNESS: The American Railroad Association Car Service Division, which has to do and makes the rules for the handling of freight car equipment. All railroads in the United States, Canada and the Mexican lines being parties thereto of the Car Service Division under the jurisdiction of Vice-President Symes of Washington, whose duty it is to distribute and regulate the flow of equipment from one railroad to another. If a shortage of equipment develops on any line in the United States, it is the duty of the Car Service Division at Washington to distribute the cars so as to eliminate the car shortage, and during the past summer

the Car Service Division, based upon the loading reports of all railroads in the United States together with freight equipment owned and dismantled, arrived at a figure showing the shortage of equipment which was to be expected to handle the coming fall crop. The estimates for the crop are furnished to the Car Service Division by the shipper's advisory boards, one of which is located in this territory, the Southwestern Shippers Advisory Board, who furnish accurate estimates to the Car Service Division as to
1299 the business which will move. Under my jurisdiction for the Texas & Pacific Railroad I furnish the figures as to our equipment owned, equipment on the lines and our loading reports and from the consolidated reports from all railroads to the Car Service Division. This estimate is arrived at and based upon the demand for equipment in this territory. One of my duties is the supplying and handling of freight cars. I am satisfied that the estimate which is mentioned in this report is very liberal.

Chairman TERRELL: Do you know how they made this estimate, of your own knowledge?

The WITNESS: I do, because I received their figures and after it was consolidated for the various lines, and listed the figures set out for the Texas & Pacific.

Chairman TERRELL: The objection will be overruled.

Mr. SAYERS: Note our exception. I would also like to make this statement. I am not objecting to his testifying as to his own lines. I am objecting to his testimony of the various other lines over the country.

The WITNESS: The outlook is for a 15 per cent increase in business throughout the United States, and a 9 per cent increase in railway car ownership, leaving a 6 per cent increase in car efficiency to be obtained during the coming fall if a car shortage is to be averted in the United States.

Mr. SAYERS: Just a minute! That statement you
1300 just made, is that the result of a survey or is that Mr. Symes' conclusion as a result of the survey?

The WITNESS: Well, it is the result of the survey. He had to get those figures from somewhere. That is where he got them from.

Mr. SAYERS: Survey was printed, was it not?

The WITNESS: Well, you have got beyond me now.

Mr. LANCASTER: Was there a report printed of the results of your survey?

The WITNESS: Oh no, not in all details, the figures as to our car supply, we got all those figures.

Mr. LANCASTER: But the percentage figures?

Mr. SAYERS: That was his conclusion, the percentage figures?

The WITNESS: That was his report to the annual meeting of the Transportation Division, which it is his job to do.

Board Member WALKER: Did you hear him make that statement?

The WITNESS: I did. I was present at the meeting.

Chairman TERRELL: Objection will be overruled.

Mr. SAYERS: Note our exception.

Q. (By Mr. LANCASTER) Now then, Mr. Long, what is the situation on the Texas & Pacific Railway Company as to the adequacy of existing equipment to handle the present prospective traffic only on the Texas & Pacific Railroad Company?

A. We have no car shortage at the present time, but we are operating now with more than 100 per cent of
1301 closed cars on our railroad, meaning by that that we have more foreign cars and system cars on our railroad than we own, more than 100 per cent, which is the reason we are going to purchase some more cars. We are having to use foreign equipment.

Q. And there is a demand for the foreign equipment on the foreign lines?

A. The Car Service Division is after all railroads to get foreign cars home. They are needed by owning lines.

Q. Now then, what is the average loading of the cars which you propose to eliminate?

A. From two to two and one half tons per car.

Q. The capacity of those cars is what?

A. The average is 40 tons.

Q. The cost of using the foreign car is what, Mr. Long?

A. $1.00 per day.

Q. That is about what the cost of owning a car is?

A. That represents the cost of ownership.

Mr. LANCASTER: I believe that is all.

Cross Examination:

Q. (By Mr. SAYERS) What position do you hold, Mr. Long?

A. Superintendent of Transportation of the Texas & Pacific Railway Company.

Q. The figures you have given are the figures of the Texas & Pacific Railway Company and not the Texas & Pacific Motor Transport Company?

1302 A. Well, it is a saving on the Texas & Pacific as I stated in the beginning, that will result to the coordinated service of the Texas & Pacific Railway and the Texas & Pacific Motor Transport Company.

Q. I understand that, but the statement you made regarding carloading and so forth is in regard to the Texas & Pacific Railway Company?

A. That is correct.

Q. Now, the statement you made as to the general—

Mr. CALLOWAY: If the Board please, the question regarding carloading and so forth: I don't know just what it all means, but if counsel is speaking to say that this gentleman's testimony is all about the railroad company, let's be specific.

The WITNESS: I understood—

Q. (By Mr. SAYERS) As a matter of fact, you are not attempting to testify as to the cost of operations of the Motor Transport Company?

A. I haven't said a thing about the cost of the operations of the Motor Transport Company.

Q. Now you made a statement in regard to what Mr. Symes told you, and in regard to what you heard Mr. Symes state in Chicago on behalf of the Association of American Railroads?

A. Yes, sir.

Q. That was simply his conclusion?

1303 A. Well, it is part of his job to put out information of that kind, he is getting paid for it, to keep the railroads posted as to what is going on.

Q. But you are not saying that is true. You are saying he made the statement?

A. I am saying he made the statement and from my knowledge and experience I think it is correct, and it figures very close.

Mr. SAYERS: I believe that is all.

Board Member GROUCHY: Mr. Long, your railroad is going to take cognizance of that statement that Mr. Symes made, and operate on that basis? You believe it, don't you?

A. We believe it is a fact, and from our experience we have just this week placed an order for 500 additional box cars, with the option of getting 1000. We know that that condition exists.

Chairman TERRELL: Is that all, gentlemen?

Exam. HIGGINS: Mr. Long, is the general effect of your testimony to show that if the Texas & Pacific Railroad Company is given authority to utilize motor trucks in connection with its operation in the manner described by Mr. Huffman, that it would be much less costly than the present so-called peddler car service?

The WITNESS: Yes, sir.

Exam. HIGGINS: And in addition, will increase the efficiency?

The WITNESS: Yes, sir.

Exam. HIGGINS: And in addition to that, be beneficial in other ways because of an alleged or possible car shortage?

1304 The WITNESS: It will assist, yes, and it will permit us, instead of handling these light merchandise cars in our trains, we can handle a full carload of some other commodity.

Exam. HIGGINS: Is it also your opinion—did you hear the testimony of Mr. Huffman?

The WITNESS: Yes, sir.

Exam. HIGGINS: Is it also your opinion, based upon your own experience and his testimony which you say you heard, that the actual costs of rail and truck coordination in the manner described by him would be a whole lot less than straight rail movement on any basis, either on a tonnage basis, or have you any opinion on that at all?

The WITNESS: He testified 10 cents a mile for truck operations, 9 or 10 cents, that is considerably less than rail operations.

Exam. HIGGINS: And your daily savings on a loaded car, your over all saving was $97.50?

The WITNESS: I figured by releasing these cars to other service on a mileage of 5 cents, is $97.50, that it is costing us to haul those cars now.

Exam. HIGGINS: And you propose by the use of motor trucks in your operations to eliminate about 23 loaded cars?

The WITNESS: Yes, merchandise cars, that is right.

Chairman TERRELL: We will recess until one o'clock.

(Whereupon at 12 o'clock noon the hearing was re-

1305 cessed until one o'clock P. M.)

AFTERNOON SESSION

1 o'clock P. M.
August 27, 1937

Chairman TERRELL: All right gentlemen, the Joint Board will come to order.

Mr. LANCASTER: I will call Mr. Byars to the stand please.

ED P. BYARS was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Byars, state your full name please sir.

A. Ed P. Byars.

Q. Where do you reside and whom do you represent in this proceeding?

A. 910 Commerce Street, Fort Worth, Texas. I am Traffic Manager for the Fort Worth Freight Bureau and the Fort Worth Chamber of Commerce and I represent those organizations in this proceeding.

Q. Mr. Byars, are you familiar with the territory that is served by the route involved in this application?

A. Yes, sir, fairly so.

Q. Are you also familiar with the routes of the Texas & Pacific Railway Company and the East Texas Motor Freight Lines?

A. Yes, sir.

Q. What is your attitude toward this application and that of the organizations for whom you speak?

A. My position is that we are very much in favor
1306 of the application being granted. We feel that it would be a great benefit to the public and by that I mean the shipping public, shippers of Fort Worth.

Q. It is your understanding is it, Mr. Byars, that the East Texas Motor Freight Lines which substantially parallels the entire route of the Southern Transportation Company has previously filed an application to merge the operations of the Southern Transportation Company with the East Texas Motor Freight Lines?

A. Yes, sir.

Q. Is it your view that it would be preferable to maintain the identity or existence of the parts of the Southern Transportation Company routes proposed to be acquired by this application as an active operating unit than to see that merged with the East Texas Motor Freight Line?

A. We feel that there should not be a merger of the Southern Transportation Company with the East Texas

Motor Freight Lines for the reason that there would be just one line then.

Q. In other words, there would be only one line operating over this particular route?

A. Yes, sir. Now then, if the Texas & Pacific Motor Transport Company is allowed to operate here on the line that they applied for, it will make competition between the East Texas Motor Freight Line and the Texas & Pacific Motor Transport.

Q. Your understanding from the evidence which
1307 you have heard here this morning is that either the Texas and Pacific Railway Company or the Texas and Pacific Motor Transport Company can give a superior service at many of the points involved to that which can be afforded by the rail facilities alone at those points?

A. I feel it certainly will be an improvement in our service from Fort Worth to East Texas. We have considerable competition between our merchants, jobbers and manufacturers of Fort Worth and those of Dallas and Shreveport, reaching into East Texas. Certainly from my experience of a good many years with the railroad in the Operating Department and also in the Traffic Department for railroads and since that time in the traffic work for the shipper, that it is bound to be a considerable improvement to have motor trucks handle freight that is taken out of set-out cars at points and distributed along the line and handled from those set-out cars in trucks along the lines to the merchants, retail merchants in the smaller towns. I will say that that is bound to give much quicker delivery than the way it is now handled, which is about the only way that I can see that the railroad company could handle it. That is, to set the freight out in merchandise cars and local it back, and the local gets there if, as and when it can. With a set-out car at night, and trucks ready to take the freight and put it in the merchant's hands by 7 or 8 or 9 o'clock in the morning is a wonderful improvement.
1308 Depot facilities and the fact that railroad company already has depot facilities and agents and telephone, and somebody to contact, is bound to be a great benefit to the smaller merchants.

Q. In conjunction with this combined service?

A. Yes, they know where the freight is, it is in the warehouse, protected, and they can get to it, they know what time it is going to be there. We have had many comments from our shippers in Fort Worth about the improvements that were brought about in the quicker deliveries from Fort

Worth to points west on the Texas & Pacific Transport Company. This application involved a similar proposition. Out there the Texas & Pacific Railroad set cars out all along the line beginning at Abilene and Big Spring and Monahans and those places along the line in Western Territory, and distributes from those set-out points by trucks along the highways, and it has made a great improvement in that service.

Q. That service was instituted this past June?

A. Yes, by the Texas & Pacific Motor Transport.

Q. On this point, Mr. Byars, let me ask whether you have noted, as to the West Texas operation that you mention, any diminution or any lessening of competition?

A. No, we have the same competition, the truck lines operating right along the same with the Texas & Pacific Motor Transport and it keeps them both on their toes to really get the freight out there to those merchants.

1309 Mr. LANCASTER: That is all, thank you.

Cross Examination:

Q. (By Mr. SAYERS) Mr. Byars, your testimony is in regard to the improved service on the railroad, is that not true?

A. Yes, sir.

Q. Do I understand from your testimony that on a shipment coming out of Fort Worth by way of the Texas & Pacific Railway Company to some intermediate points on this route, that it is better to local it back, I mean from a set-out car via a truck?

A. Yes, sir.

Q. Well, now, are you speaking of that in comparison with a through truck operation?

A. That is compared with the present service that we get by railroad.

Q. By railroad?

A. Yes, sir.

Q. Now, at the present time, the Southern Transportation Company is operating out of Dallas East over the route, we will take for example a shipment going from Dallas to the town of Elmo. Now would it be better from your viewpoint as a traffic expert to carry that direct through on a truck to Elmo, or would it be better so far as the public is concerned to take that on the train from Dallas to some point, Wills Point as I understand the application, and then local it back by truck?

1310 A. Answering that question I would say that the plant here as I understand the contemplated plan is moving the freight out of Dallas direct by truck, by the Texas & Pacific Railroad to points within a certain radius of Dallas where the quickest deliveries can be made by truck. That is quicker than a set-out car to a point near the destination you wish to reach, either East or West of it, and then local back by truck. Where the Texas & Pacific Transport Company can make a quicker delivery by truck direct, that is what they are going to do.

Q. In other words, where they are going to haul it out, that would be the same service as Southern is now performing?

A. Well, yes, it probably would as to that, but now then the advantage on the whole is that all of the points from Dallas to Shreveport or Fort Worth to Shreveport will have a system worked out whereby cars will be handled by railroad and set out at the most strategic point for distribution to make deliveries on each side of it so that merchants will have that freight by 7 or 8 o'clock in the morning, and that is when he wants it.

Q. Well, now, just exactly what I am getting at is, is it more advantageous from your viewpoint to have the shipment moved direct by truck or to have it move out to some distribution point by rail and then have it localed back by truck?

A. As I explained a moment ago that would depend upon the points you wished to reach. Now, a point within 30 miles of Dallas I would say should go out on a Texas
1311 & Pacific truck but if it was 140 or 150 miles from Dallas I would send it out in a car and local it back from there. Now, the Southern Transportation Company as I understand it, do not have any regular fixed schedule. We don't know whether they are going to run or not. If it is raining or they haven't got a truck they are going to run pretty much when they feel like it. We would have a regular service to depend on. We would have a regular agent and know who to get in touch with, we would know where our freight is going to be all along that line.

Mr. Goodstein: Won't the financial standing of the Texas & Pacific Railroad be better than the Southern Transportation Company?

The Witness: Yes, because the merchants would know their claims were going to be paid and know who to get ahold of, and know where it is. They have got a wire all up and down that line and they can find it and get it back

to them if they lose it, so the responsibility of the Texas & Pacific Motor Transport Company is something that is worthy of consideration.

Mr. GOODSTEIN: Do the merchants in Fort Worth get a good many phone calls or wires for small merchandise?

The WITNESS: Oh, yes, every day.

Mr. GOODSTEIN: From small towns that have no through package service?

The WITNESS: Yes, sir.

Mr. GOODSTEIN: And don't you find when you
1312 can't make that delivery early the next morning prior to the opening of the stores they are inclined to go to other markets?

The WITNESS: Yes, they are not satisfied with it. They complain about it, and I believe this system that the Texas & Pacific is proposing here would obviate that.

Q. (By Mr. Lancaster) Mr. Byars, let me ask you this; as I understand it the chief advantage from a physical standpoint of the operation of the Southern Transportation Company's franchise of the applicant over this existing operation is that in the smaller town the applicant will have available the services and resident agents and a place to store freight on arrival and file claims with, and all such as that?

A. Yes, that is right. You wouldn't have to leave it laying around at night.

Chairman TERRELL: Any more questions?

(No response.)

(Witness excused.)

Mr. LANCASTER: I believe we might have Mr. Goodstein state his position in this matter.

Mr. GOODSTEIN: My name is Sam Goodstein. I am manager of the Transportation Department of the Dallas Chamber of Commerce and have held that position for approximately 29 years, prior to which time I have held various positions with the Texas & Pacific General Freight Office.

1313 Mr. LANCASTER: I believe Mr. Reeves of Shreveport is here. If you will state your name and that your testimony would be substantially the same as Mr. Byars, I think that will conclude our case.

JOHN REEVES was sworn and testified as follows:

Direct Examination:

The WITNESS: My name is John Reeves. I am Traffic Manager of the Southwestern Gas & Electric Company, Shreveport, Louisiana.

Q. (By Mr. LANCASTER) You are a shipper and receiver of freight into the territory involved in this application?

A. Yes, we have quite a few properties on the lines in East Texas.

Q. And do you adopt Mr. Byars' testimony as your own, as applied to Shreveport?

A. Yes, that would about express our position.

Exam. HIGGINS: Does that also cover Mr. Goodstein?

SAM GOODSTEIN was sworn and testified as follows:

Direct Examination:

Q. (By Mr. LANCASTER) Mr. Goodstein, if you were asked the same questions as asked Mr. Byars, would your answers be substantially the same, as applied to Dallas?

A. Yes, sir.

(Witness excused.)

1314 Exam. HIGGINS: Is there anyone here who could give a brief explanation of your financial statement, who could answer a few questions?

Mr. LANCASTER: I had a gentleman here who could, but he has gone. Perhaps I can answer the questions myself.

Exam. HIGGINS: All right, how do you propose to pay the purchase money?

Mr. LANCASTER: By an advance from the Texas & Pacific Railway Company to the Texas & Pacific Motor Transport Company, which funds are available, having been set aside for that purpose. It will be an open advance.

Exam. HIGGINS: Open account?

Mr. LANCASTER: Yes, sir.

Exam. HIGGINS: In your opinion can this line in operation be made self-sustaining without any further financial assistance from the railroad?

Mr. LANCASTER: Yes, sir. And I base my opinion on our past operations on other auxiliary motor truck lines. We have found that we can achieve substantial net economies and by that I mean that the cost of operating the trucks, including the investment is substantially less than the real economies we can achieve by operating them and we also find that we are able to build up the communities which we serve by improving their service, and our volume of traffic is increasing. That has been the trend.

1315 Exam. HIGGINS: So that it possibly will be that of a self-sustaining operation rather than continued advances from the railway?

Mr. LANCASTER: Yes, sir. And I may say that the only advances for acquisition from the railway to the transpor-

tation company has been those in connection with the lines from Dallas to Big Springs, and there the only advances have been the capital advances, and the Texas & Pacific Motor Transport Company has operated at a profit ever since the year about 1930.

Exam. HIGGINS: Well, the net income from operations for the year 1935 is shown as $5,560.00; for 1936 $5,796.00 and from January 1st to May 31st 1937 $4,919.00, and for the two months June and July $1,018.84, so that the net for the first seven months of 1937 is almost equivalent to the entire income of the past two years.

Mr. LANCASTER: Yes, sir, and I think that prior to that time the Texas & Pacific Transport Company operated as an intrastate carrier by rail under contract with the Texas & Pacific Railway Company, which it now does also. I might also add that the division between the Texas & Pacific Railway and the Texas & Pacific Transport Company could have been somewhat lower than accordingly between two railroads under the same circumstances. I could illustrate that by saying that on the Monahans-Lovington run on a shipment which would move from Dallas to Monahans by the Texas & Pacific Railway Company and then
1316 over to Lovington by the Transport Company, the division allowed to the Texas & Pacific Transport Company has been somewhat less than that allowed to other Texas and New Mexico Railway companies which operate on absolutely parallel routes to the Texas & Pacific Transport route from Monahans to Lovington.

Exam. HIGGINS: Do you know whether the Texas & Pacific Railway Company proposes to advance funds for the new equipment required? I think there was some testimony on that?

Mr. LANCASTER: Yes, the Texas & Pacific Railway Company has set aside funds for the complete equipment of a motor carrier service to be conducted by the Texas & Pacific Motor Transport Company.

Exam. HIGGINS: I notice the current financial position of the Texas & Pacific Railway Company as of July 31, 1937, shows current assets of $9,817,846.18 as against current liabilities of $3,538,942.61. Now in your opinion that advance of $50,000.00 won't cast any burden on the Texas & Pacific Railway Company?

Mr. LANCASTER: No, sir, the $50,000.00 advance would be a small part of our net income so far as the year 1937 is concerned, and if the net income for the rest of the year 1937 keeps on a par of that for the other part of the year we will earn at least $3,000,000.00 this year.

Exam. HIGGINS: Well, I assume that if the operation, the motor operation, the one here proposed, did need financial support, the Texas & Pacific Railway Company would
1317 give it whatever support was necessary to continue to render public service in the event it didn't turn out to be self-sustaining?

Mr. LANCASTER: The Texas & Pacific Railway service stands ready and willing to guarantee any and all accounts of the Texas & Pacific Transportation Company.

Exam. HIGGINS: Can you tell me what is represented by the figure $7,748.00?

Mr. LANCASTER: That item represents a breakdown of the cost of acquiring the Fort Worth Warehouse and Storage Company operating rights, and a portion of the W. A. Johnson rights, and in entering those we have submitted the journal entries to the section of accounts and we had at first the entire sums paid charged to the items of franchises. Upon their instructions we altered those accounts so as to show under items of franchises only that part of it which was shown by the books of the vendors under franchises, and the remainder of it is charged to other intangible profits I believe.

Exam. HIGGINS: And if this application is finally approved, will you pick up on the books of the Texas & Pacific the actual costs of these operating rights, $40,000.00?

Mr. Lancaster: They will be entered on our books in accordance with the section of accounts. We are required to submit to them.

Exam. HIGGINS: Do you know whether your net income figures include provisions for Federal Income Taxes
1318 or whether they are subjected to further reductions? I think I read them in the record here before, $5,518.00?

Mr. LANCASTER: I don't know sir. I will be glad to find out and advise the Board.

Exam. HIGGINS: What is represented by the item $92,600.00 non-negotiable debts of the affiliated companies on the balance sheet of the Transport Company, Exhibit No. 3, balance sheet of July 31?

Mr. LANCASTER: That represents advances heretofore made by the Texas & Pacific Railway Company to the Texas & Pacific Motor Transport Company and is largely, if not wholly accounted for by the cost of operating rights of the Fort Worth Warehouse and Storage Company and a portion of the Johnson routes, plus the cost of the equipment necessary to institute those operations, and probably in

there also in the cost of equipment operated within the state of Louisiana.

Exam. HIGGINS: Well, it was expended for capital purposes and not to assist the Transport Company in meeting its own operating expenses?

Mr. LANCASTER: That is correct.

Exam. HIGGINS: Is there any money in the depreciation or surplus accounts, or are those bookkeeping entries?

Mr. LANCASTER: I don't know sir.

Exam. HIGGINS: Do you know whether that represents any cash reserve?

1319 Mr. LANCASTER: No, sir, our depreciation as I understand it is kept on what is known as a straight line method.

Exam. HIGGINS: But you don't actually set money aside for whatever entry you make on the books?

Mr. LANCASTER: I imagine not. I will verify that if you want me to and advise you.

Exam. HIGGINS: Now this testimony wasn't under oath, but I assume the Board will accept it as a true representation of the facts.

Chairman TERRELL: Is there any more testimony by anybody?

Mr. CALLOWAY: If the Board please, on behalf of the Southern Transportation Company I believe if I might be permitted to make a statement for the record, however, if there is any objection to the portion of the statement as made I will withdraw it and submit it in some other form.

Chairman TERRELL: Go ahead, Mr. Calloway:

Mr. CALLOWAY: The Southern Transportation Company, at the time this contract of purchase and sale was made with the Texas & Pacific Transport Company, was under contract of merger with the East Texas Motor Freight Lines, subject of course to the approval of the proper regulatory body. In the event this application will not be approved it will be the purpose of the Southern Transportation Company to respectfully urge and insist upon the other proposition, that is, the merger with the East Texas Motor Freight Lines. If this application should be

1320 approved then Southern Transportation Company will urge the merger of the remainder of the lines with the East Texas Motor Freight Lines which will give to the East Texas some additional operating rights. "In the event that neither this application nor the merger with the East Texas should be approved, I am quite frank to state

that it will present quite a problem to the Southern Transportation Company because it is not the opinion of the Southern Transportation Company that a continued operation of the lines as at the present time is to the best interest of the carriers or the shipping public. Southern Transportation Company feels that if this application should be approved and if the merger of the remaining portion of the Southern properties with the East Texas should be approved that then the interest of the shipping public will be served by the operation of East Texas as improved, and the Texas and Pacific Motor Transport Company as improved, as compared with present operations of the East Texas, the Southern Transportation Company and The Texas & Pacific Transport Company."

Mr. SAYERS: Mr. Calloway, are you going to have a witness for the Southern Transportation Company?

Mr. CALLOWAY: No, sir.

Mr. SAYERS: I want to ask one question. Does the Southern Transportation Company now operate on regular schedules?

Mr. CALLOWAY: Yes, operates out of here every night.

Mr. SAYERS: Operates out of here every night on 1321 scheduled operations?

Mr. CALLOWAY: Yes. Mr. Byars will verify that we operate 7 trucks out of here every night, approximately that.

Now, if the Board please, we have prepared some financial statements of Southern Transportation Company. Are they desired in this proceeding?

Exam. HIGGINS: You were requested to do that, you might just as well put them in the record.

Mr. CALLOWAY: With the permission of the Board I will ask my associate Mr. Kidwell, to put these in the record.

Mr. KIDWELL: There were no financial statements of Southern Transportation Company filed with the application. I have at the present time an operating income and surplus accounts of Southern Transportation Company for the period February 1, 1936 to January 31, 1937 inclusive, which at the time of the filing of the application was the only period for which Southern's books were kept, so that we could make a complete financial statement. Before that they were kept on cash receipts and disbursement basis. Mr. Laird and Mr. Crim have purchased the stock and set up their own system of bookkeeping on Feb-

ruary 5th, 1936. This was the reason for taking February 1, 1936 as a starting point in making up the income and surplus statement. We also have brought each of these statements up to date to the last available date by making an income operating and surplus statement for the period,
1322 or by making a complete statement from February 1, 1936 to June 30, 1937, which was the last available date for which information could be secured in time for this hearing, showing a separation of the operating income and separate accounts from the period February 1, 1936 to January 31, 1937, which was the period covered by the prior statement and also additional five month period February 1, 1937 to June 30th, 1937. I would like to submit both of these financial statements as Exhibits.

Chairman TERRELL: They will be marked Exhibit No. 7 and received in evidence.

(Exhibit No. 7, Witness Kidwell, received in evidence.)

Mr. LANCASTER: Mr. Kidwell, would you mind saying if you know, what the price was, paid by Messrs. Crim and Laird for Southern Transportation Company stock at the time they acquired it?

Mr. KIDWELL: Yes, Mr. Crim and Mr. Laird paid $60,000.00 cash for the stock of Southern Transportation Company on February 5, 1936.

Mr. SAYERS: That was the entire line?

Mr. KIDWELL: Well, they bought the stock of the company.

Mr. SAYERS: That was through, from Dallas to Shreveport?

Mr. KIDWELL: Yes, each one purchased half of the stock.

Exam. HIGGINS: Was that control of the Southern?

Mr. KIDWELL: That was all of the capital stock.

Exam HIGGINS: Was that covered by an application?

Mr. KIDWELL: No, sir. No application was neces-
1323 sary due to the fact that Mr. Laird and Mr. Crim each purchased half interest, neither of which had any control over the company. We were so advised by the Bureau of Motor Carriers that it was not necessary to file an application on that style of a transfer because neither of them had control of the Southern. Each one had half of the capital stock.

Mr. CALLOWAY: If the Board please, in that connection, may I state that the facts with reference to the purchase of the Southern will be gone into fully in the next hearing.

We do not consider it necessary at this time, but each and every step taken at the time Southern was purchased was taken with the approval of the Interstate Commerce Commission, and we have the documentary proof.

Mr. SAYERS: One more question, Mr. Kidwell. Is your financial operating statement of Southern Transportation Company broken down so it will cover the portions of the operation being purchased by the applicant here, or is it the entire operation of the Southern?

Mr. KIDWELL: Yes, sir.

Mr. SAYERS: The over all statement?

Mr. KIDWELL: Yes, sir.

Exam. HIGGINS: I was going to ask that same identical question.

Mr. KIDWELL: It was impossible to segregate the different divisions of the line from their record, as to the
1324 part they are selling and the part being retained.

Mr. LANCASTER: How many miles is it, Mr. Kidwell, from Wills Point to Gladewater over this Southern route via Tyler, approximately?

Mr. KIDWELL: 81 miles.

Mr. CALLOWAY: If the Board please, we wish to call attention to the fact that the portion of Southern Transportation Company which the Texas & Pacific Motor Transport Company is not purchasing doesn't parallel Texas & Pacific Lines and for that reason it wasn't deemed necessary to include in that. I might say that the portion of Southern which was not purchased and which will be merged by East Texas Motor Freight Lines, that one line does not add materially to East Texas, and when the Texas & Pacific gets the operating rights over the highway over which there is no truck service, the set-up which they propose would be better than if they purchased all of the Southern.

Exam. HIGGINS: Mr. Kidwell, did you furnish a balance sheet as well as a profit and loss?

Mr. KIDWELL: Yes, sir, the balance sheets were furnished as of January 31, 1937 and June 30th, 1937, being the last available date.

Exam. HIGGINS: And that balance sheet is included in Exhibit No. 7?

Mr. KIDWELL: Yes, sir.

1325 Exam. HIGGINS: Balance sheet and profit and loss statements were received in evidence as Exhibit No. 7?

Mr. KIDWELL: Yes, sir. Mr. Huffman testified about the mileage of the portion being sold. His statement was correct except a little bit of confusion about the distance from Marshall to Sheveport. I think that distance is 41 miles instead of 25 miles as he stated.

Mr. LANCASTER: Let the record show that Mr. Huffman acquiesced in the correction.

Exam. HIGGINS: Mr. Lancaster, I have a notation to the effect that if the applicant is not successful in securing operating rights between Wills Point and Gladewater, Texas from the Railroad Commission of Texas, which will give it continuous operation rights from New Orleans to Big Springs, the agreement will not be binding. Is that correct or incorrect?

Mr. LANCASTER: It is correct. Unless the Texas & Pacific Transport Company is successful in securing operating rights over the highway between Wills Point and Gladewater via Big Sandy, it is not obligated under the contract to consummate that transaction.

Exam. HIGGINS: Well, now, I assume that if you did secure that right from the Railroad Commission of Texas you would also expect to handle interstate shipments over that route, would you not?

Mr. LANCASTER: We would, and would make appli-
1326 cation to it, however, that gap, the interstate business would be an insignificant matter, and we would go ahead even if interstate rights were denied us.

Exam. HIGGINS: It is not contingent upon dual approval?

Mr. LANCASTER: No, sir, only contingent upon the approval of the Railroad Commission of Texas.

Mr. SAYERS: If the Railroad Commission doesn't approve the application heard here in Dallas some two weeks ago, you are not bound to go through with that transaction with Southern?

Mr. LANCASTER: We are not obligated to, but we may do it.

Chairman TERRELL: Is that all, gentlemen?

Exam HIGGINS: Mr. Lancaster, if the Interstate Commerce Commission should at some future time require additional information in connection with this proceeding, will you agree to furnish it in any convenient form such as correspondence, Exhibits, affidavits or depositions, without the necessity for further hearing, provided you furnish copies on all interested parties and provided the informa-

tion requested is not of such magnitude that a further hearing is necessary?

Mr. LANCASTER: Yes, sir.

Chairman TERRELL: Mr. Sayers, do you have any testimony to offer?

Mr. SAYERS: No testimony for the protestants.

Chairman TERRELL: I believe I will ask if either
1327 side wants to file briefs?

Mr. LANCASTER: The applicant is willing to waive the filing of briefs.

Mr. SAYERS: I want to file a brief.

Mr. LANCASTER: In that case the applicant wants to file a brief.

Mr. CALLOWAY: We would like to file a brief also.

Exam. HIGGINS: On September 25th, all briefs will come due the same date.

Chairman TERRELL: That will conclude the case.

(Whereupon, at 2:30 P. M., August 27th, 1937, hearing in the above entitled matter was closed.)

1328 C-2-A *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 3rd day of March, A. D. 1939

No. MC 50544 Sub 8*

APPLICATION OF TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

This proceeding coming on for further consideration:

It appearing, That a previous order having been entered in this proceeding authorizing the issuance of a certificate of public convenience and necessity upon compliance with the terms of the said order; that this proceeding having been reopened on our own motion; and that further consideration having been had;

It further appearing, That applicant or predecessor in interest was, on June 1, 1935, and continuously since has been, in bona fide operation as a common carrier by motor vehicle in interstate or foreign commerce according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order; and the Commission so finding: therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the Motor Carrier Act, 1935, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order*, then said applicant shall show if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

It is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission.

And it is further ordered, That the previous order issued in this proceeding, describing the authority to which applicant has been found to be entitled, upon compliance with the requirements therein specified, be, and it is hereby, vacated and set aside.

By the Commission, division 5.

(SEAL)

W. P. BARTEL
Secretary

1329 C-2-A

Appendix to the order of the
INTERSTATE COMMERCE COMMISSION, Division 5, dated the 3rd day of March, A. D. 1939

No. MC 50544 Sub 8*

APPLICATION OF TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of the commodities indicated, over regular routes, between fixed termini, is as specified below:

Commodities generally, except those of unusual value, and except high explosives, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Dallas, Tex., and Wills Point, Tex.:

From Dallas over U. S. Highway 80 to Wills Point, and return over the same route.

Between Gladewater, Tex., and Shreveport, La.:

From Gladewater over U. S. Highway 80 to Shreveport, and return over the same route.

All intermediate points except Forney and Mesquite, Tex.

1330 *Supplemental Order* C-2-A SUB-PROP

At a session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of November, A. D. 1942

No. MC 50544 Sub 8*

APPLICATION OF TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

Upon further consideration of the above-entitled proceeding, and good cause appearing therefor;

* This order embraces that portion of the operating rights applied for under Docket No. MC 1296, which was acquired by the applicant herein, pursuant to the Commission's decision in MC-F-378 decided July 15, 1937.

* This order embraces that portion of the operating rights applied for under Docket No. MC 1296, which was acquired by the applicant herein, pursuant to the Commission's decision in MC-F-378 decided July 15, 1937.

It is ordered, That the order entered therein March 3, 1939, be, and the same is hereby amended by adding thereto immediately following the descriptions of the operations authorized between Dallas, Tex., and Wills Point, Tex., and between Gladewater, Tex., and Shreveport, La., the following restrictions:

Restrictions: (1) The applicant shall not render service from and to, or interchange traffic at, any point other than a station on the lines of the Texas and Pacific Railway Company; and

(2) The authority herein granted shall be subject to further limitations, restrictions, or modifications as may be found necessary to impose or make in order to insure that service shall be auxiliary or supplementary to train service of said railway and shall not unduly restrain competition.

It is further ordered, That in all other respects, the order of March 3, 1939, shall remain in full force and effect.

And it is further ordered, That this order shall become effective the 30th day of December, A. D. 1942, unless on the Commission's own motion or for good cause shown by applicant or any other parties to interest, it is otherwise ordered.

By the Commission, division 5.

(SEAL)

W. P. BARTEL
Secretary

1331

C-5.1

Certificate of Public Convenience and Necessity

No. MC 50544 Sub 8*

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 10th day of March, A. D. 1943

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions

* This order embraces that portion of the operating rights applied for under Docket No. MC 1296, which was acquired by the applicant herein, pursuant to the Commission's decision in MC-F 378 decided July 6, 1938.

of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over regular routes,

Between Dallas, Tex., and Wills Point, Tex.:

From Dallas over U. S. Highway 80 to Wills Point, and return over the same route.

Between Gladewater, Tex., and Shreveport, La.:

From Gladewater over U. S. Highway 80 to Shreveport, and return over the same route.

Service is authorized to and from all intermediate points except Forney and Mesquite, Tex.

RESTRICTIONS:

The applicant shall not render service from and to, or interchange traffic at, any point other than a station on the lines of the Texas and Pacific Railway Company; and

1332 The authority herein granted shall be subject to further limitations, restrictions, or modifications as may be found necessary to impose or make in order to insure that service shall be auxiliary to or supplementary to train service of said railway and shall not unduly restrain competition.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance

of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

1333 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 18th day of May, A. D. 1940

No. MC-50544 (Sub-No. 9)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—MESQUITE—FORNEY

Investigation of the matters and things involved in this proceeding having been made, said application having been duly referred to joint board No. 77 for appropriate proceedings, which joint board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That upon compliance with all requirements of sections 215 and 217 of the Motor Carrier Act, 1935, and with the rules and regulations promulgated by the Commission thereunder, a certificate of public convenience and necessity be issued to applicant authorizing extension of operation, in interstate or foreign commerce, as a common carrier by motor vehicle, of the commodities, between the points, and in the manner set forth in the findings of said report.

It is further ordered, That the above-described certificate shall be issued upon condition that the operation authorized thereunder shall be conducted in accordance with all applicable rules, regulations, and requirements relating thereto, issued by the Commission under the Motor Carrier Act, 1935.

And it is further ordered, That this order shall be effective on May 18, 1940.

By the Commission, division 5.

W. P. BARTEL
W. P. Bartel,
Secretary.

(SEAL)

1334 *Certificate* C-10

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 9th day of August, A. D. 1940

No. MC 50544-Sub 9

APPLICATION OF THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

Investigation of the matters and things involved in this proceeding having been made, and an order herein accompanied by a report having become effective as the order of the Commission, which report and order are hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require operation by the said applicant, and it is hereby authorized to engage in interstate or foreign commerce, on and after August 9, 1940, as a common carrier by motor vehicle of the commodities indicated, over (a) the regular routes, between the fixed termini, and to and from the intermediate points previously authorized, to and from the intermediate point specified below:

General commodities, except those of unusual value, high explosives, household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Intermediate point: Forney, Tex.;

and over (b) the regular route, between fixed termini, and to and from the intermediate point, as follows:

General commodities, with exceptions as in (a) above,

Between junction U. S. Highway 80 and unnumbered highway and junction Texas Highway 183 and U. S. Highway 80:

From junction U. S. Highway 80 and unnumbered highway near Mesquite, Tex., over unnumbered highway to Mesquite, thence over Texas Highway 183 to junction U. S. Highway 80, and return over the same route.

Intermediate point: Mesquite, Tex.

Service herein authorized is subject to the following conditions:

Service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas & Pacific Railway Company;

1335 Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the Texas & Pacific Railway Company;

Shipments transported by applicant shall be limited to those which it receives from or delivers to the Texas & Pacific Railway Company under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail;

All contractual arrangements between applicant and the Texas & Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties; and

Such further specific conditions as the Commission may, in the future, find it necessary to impose in order to restrict applicant's operation, to service which is auxiliary to, or supplemental of, rail service.

It is ordered, That this certificate shall remain in force for such period as the said carrier shall continue to perform the services herein authorized, unless revoked in accordance with the provisions of the Motor Carrier Act, 1935.

It is further ordered, That operations pursuant to this certificate shall be subject to such terms, conditions, and limitations as have been, or may be hereafter, prescribed by the Commission.

By the Commission, division 5.

(SEAL)

W. P. BARTEL
Secretary

1336 Interstate Commerce Commission

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
BIG SPRING-HOBBS EXTENSION

Submitted May 9, 1941. Decided September 2, 1941.

Public convenience and necessity found to require operation, subject to certain conditions, by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities over a specified route between Big Spring, Tex., and Hobbs, N. Mex. Issuance of a certificate, subject to conditions, approved upon compliance by applicant with certain requirements, and application in all other respects denied.

S. W. Lancaster and *W. O. Reed* for applicant.
Jess C. Levins and *W. D. Benson, Jr.*, for protestants.

Report of the Commission

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND PATTERSON

BY DIVISION 5:

The recommended order of the joint board, to which no exceptions were filed, was stayed by us. We have given full consideration to the record and find the joint board has adequately stated the facts, and we adopt the findings made in the report of the joint board as our own.

Upon compliance by applicant with requirements of sections 215 and 217 of the Interstate Commerce Act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application except to the extent granted herein.

REPORT RECOMMENDED BY THE JOINT BOARD

The Texas and Pacific Motor Transport Company, with general offices at Dallas, Tex., by application filed February 15, 1940, seeks a certificate authorizing an extension of
1337 operations in interstate or foreign commerce as a common carrier by motor vehicle of general commodities between Big Spring, Tex., and Hobbs, N. Mex., over U. S. Highway 87 from Big Spring to Lamesa, Tex., thence Texas Highway 15 to the Texas-New Mexico State line, and thence New Mexico Highway 83 to Hobbs, serving no intermediate points.

The application was referred to the joint board for hearing and the recommendation of an appropriate order there-

on. Hearing was held on October 17, 1940, at Hobbs. Several motor carriers intervened in opposition.

The Texas and Pacific Railway Company, hereinafter called Texas and Pacific, directly or through rail subsidiaries, operates a main line between New Orleans, La., and El Paso, Tex., via Dallas, Fort Worth, Big Spring, Monahans, and Pecos, Tex.; and a branch line between Monahans and Lovington, N. Mex., via Hobbs, hereinafter called Monahans Branch. Applicant, a subsidiary motor common carrier of Texas and Pacific, operates over highways along these rail lines between, among other places, Dallas and Pecos, via Monahans; and over a route paralleling the Monahans Branch, which route will hereinafter be called the Monahans route. The combined operations of these carriers form a coordinated rail-motor service.

Since 1935 the Monahans branch has been used almost entirely for carload traffic. What would otherwise ordinarily be less-than-carload traffic has been handled by applicant over the corresponding Monahans route. Local traffic over the route is negligible. The volume of traffic to and from points on the route has its origin or destination at mainline points on the Texas and Pacific or at points beyond the lines of that carrier. The flow is predominantly to points on the route, but there is a substantial movement in the other direction. The heavy flow originates at Dallas and Fort Worth, or passes through
1338 these points from more easterly origins. There is, however, an appreciable movement from points on the Texas and Pacific west of Fort Worth.

The Monahans route passes through an important oil field, and Hobbs, with a population of about 14,500, is the center of the industry and the most important point for traffic on the route. The other towns on the route are relatively small and Lovington is the only town north of Hobbs. At present traffic from, or beyond, Dallas and Fort Worth, to points on the Monahans route is handled by train to Monahans and thence by applicant's truck. One train leaves Dallas around 7:46 and Fort Worth around 9:30 p. m. and arrives at 8:00 o'clock the next morning at Monahans where transfer is made to applicant's trucks. Traffic for Hobbs and Lovington moves in one truck and that for points intermediate to Hobbs moves in another. Delivery is now ordinarily made to consignees at Hobbs between 11:00 a. m. and 1:00 p. m. and at Lovington about one hour later.

The proposed operation is intended primarily to improve service to Hobbs. Under this plan applicant would transfer Hobbs and Lovington freight from the train at Big Spring, 96 miles east of Monahans, and move it over the more direct proposed route. The distance is 83 miles between Monahans and Hobbs; 178 miles between Big Spring and Hobbs, via Monahans; and 116 miles between Big Spring and Hobbs over the proposed route. Proposed schedules would leave Big Spring at 4:30 a. m. and 3:00 p. m. and arrive at Hobbs at 8:30 a. m. and 7:00 p. m., respectively. In the opposite direction schedules would leave Hobbs at 9:00 a. m. and 7:30 p. m. and arrive at Big Spring at 1:00 p. m. and 11:30 p. m., respectively.

Under the proposed arrangement, the train leav-
1339 ing Dallas and Fort Worth at 7:40 and 9:30 p. m., respectively, will arrive at Big Spring at 4:30 a. m. and unload Hobbs and Lovington freight for applicant's trucks. By this means, delivery can be made to Hobbs consignees as early as 8:30 a. m. and to Lovington consignees approximately one hour later. Service over the Monahans route would not be curtailed to intermediate points, but the proposed extension would divert most of the Hobbs and Lovington tonnage that now moves over that route.

Fifteen witnesses testified in support of the application, one from Fort Worth, four from Dallas, three from Lovington, and seven from Hobbs. Three motor carrier witnesses testified in opposition.

From Dallas and Fort Worth there is overnight joint-line motor carrier service by means of which freight leaving Dallas as late as 7:00 p. m. can be delivered in Hobbs next day not earlier than 1:00 p. m. Protestants show that under an existing arrangement this service can be speeded up so that delivery can be made in Hobbs next day by 9:00 a. m.

The proposed extension is not a new operation, but merely an improvement of a service already performed by applicant in its present operations. The bulk of the traffic to benefit from the improvement is already handled by applicant. If the improved service should attract additional traffic to applicant, that fact should not deprive the public of the substantial advantages that would come from more expedited service. The proposed changes would not deprive any community of service now being rendered and would not result in any reduction of employees. The changes would have the desirable result of more economical

operations by applicant. The joint board is of the opinion that the public interest would be served by the proposed extension.

1340 In *Texas & P. Motor Transport Co., Com. Car. Application,* 12 M. C. C. 37, wherein applicant was authorized to operate over the Monahan route, certain restrictions were imposed by the Commission. The conditions here are substantially similar to those considered in that proceeding and the extension here is merely a change in that operation. Restrictions there imposed should be imposed here.

The joint board finds that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between Big Spring and Hobbs over the regular route hereinbefore described, serving no intermediate points, subject to the following conditions; (1) the service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of rail service of the Texas and Pacific Railway Company, and the Texas-New Mexico Railway Company, hereinafter referred to as the railways; (2) applicant shall not serve, or interchange traffic at, any point not a station on the rail line of the railways; (3) all contractual arrangement between applicant and the railways shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it necessary, in order that such arrangements shall be fair and equitable to the parties; and (4) such further specific conditions the Commission in the future may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

The joint board further finds that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and to the rules and regulations of the Commission thereunder; and that a certificate authorizing such operation should be issued.

1341 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 2nd day of September, A. D. 1941

No. MC-50544 (Sub-No. 10)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
BIG SPRING-HOBBS EXTENSION

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied, effective October 25, 1941.

By the Commission, division 5.

W. P. BARTEL
Secretary

(SEAL)

1342 *Certificate of Public Convenience and Necessity* C-16.1

No. MC 50544 Sub 10

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 1st day of October, A. D. 1941.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, over a regular route,
Between Big Spring, Tex., and Hobbs, N. Mex.:
From Big Spring over U. S. Highway 87 to Lamesa, Tex., thence over Texas Highway 15 to the Texas-New Mexico State line, and thence over New Mexico Highway 83 to Hobbs, and return over the same route.

Service is not authorized to or from intermediate points.

Service authorized herein is subject to the following conditions:

Service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas and Pacific Railway Company, and the Texas-New Mexico Railway Company.

Said carrier shall not serve, or interchange traffic at any point not a station on the rail line of the above-mentioned railways;

1343 All contractual arrangement between said carrier and the above-mentioned railways shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further specific conditions the Commission in the future may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

It is Further Ordered, That this certificate shall remain in force for a period of ninety days from and after the date hereof; *provided,* however, that if, during said period of ninety days, the order in this proceeding authorizing the issuance hereof shall not have been set aside, vacated or modified, this certificate shall thereupon become permanent.

And it is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

(SEAL)

W. P. Bartel
Secretary

1345 INTERSTATE COMMERCE COMMISSION

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS-EL PASO, TEXAS

Submitted October 27, 1941. Decided March 21, 1942.

Public convenience and necessity found to require operation, subject to certain conditions, by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, with certain exceptions, between Pecos and El Paso, Tex., over a regular route. Issuance of a certificate, subject to conditions, approved upon compliance by applicant with certain requirements, and application in all other respects denied.

Rollo E. Kidwell, M. E. Clinton, Sam W. Lancaster, and *W. C. Reed* for applicant.

W. D. Benson, Jr., B. A. Carter, A. M. Hoffer, Chas. D. Mathews, Sam R. Sayers, and *Robert L. Holliday* for protestants.

Frank A. Leffingwell and *Norman Hall* for interveners.

Report of the Commission

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND PATTERSON.

BY DIVISION 5:

Exceptions were filed by protestants to the recommended order of the joint board, and applicant replied. Our conclusions differ somewhat from those recommended.

By application filed September 24, 1940, as amended, The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., seeks a certificate of public convenience and necessity as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, except money, high explosives and corpses, between Pecos and El Paso, Tex., over U. S. Highway 80, serving all intermediate points which are stations on the rail line of the parent company. Except as otherwise stated all points are in Texas. A number of motor carriers oppose the application. The Texas and New Orleans Railroad Company, and the Dallas and Fort Worth Chambers of Commerce intervened.

1346 Consideration has been given to the entire record in the proceeding. The facts stated in the recommended report upon which the joint board based its recommended findings and to which no exceptions were filed,

need not be restated and we adopt the findings of the joint board except as modified herein. We shall confine our discussion to the matters to which exceptions are directed and to certain other matters hereinafter mentioned.

Applicant is a wholly owned subsidiary of The Texas and Pacific Railway Company, hereinafter called the railway. The route parallels the rail line between Pecos and El Paso, a distance of 214 miles. The rails between El Paso and Sierra Blanca, a distance of 92 miles, are operated over jointly by the railway and the Texas and New Orleans Railroad Company, and the station and other facilities are likewise used jointly except that separate facilities are maintained at El Paso. Applicant operates as a common carrier by motor vehicle, in interstate or foreign commerce, in much of the territory served by the railway including operation over highways paralleling the rail line between Dallas, Fort Worth, and Pecos. The instant application is to extend these interstate operations over a highway paralleling the rail line to its western terminus at El Paso. Application for intrastate authority has been made to the Railroad Commission of Texas.

Pecos has a population of approximately 5,000 persons and is presently served by applicant. El Paso is a large distributing center. The intermediate territory is thinly populated and the towns are small. The territory between Pecos and McNary, a distance of 165 miles, is devoted almost entirely to ranching. Between McNary and El Paso the route traverses a highly productive farm region
1347 devoted principally to the raising of cotton and alfalfa. The railway handles considerable uncompressed cotton, under appropriate transit rules, from points on this portion of its line into the compress at Fabens and thence beyond in carload lots. Applicant would perform the initial movement of uncompressed cotton in bales, in small lots, into the compress point in aid of the rail service and by our order of November 26, 1941, in No. MC-50544 (Sub-No. 17TA) it was granted temporary authority for a period not to exceed 180 days to so engage in operation as a common carrier by motor vehicle in the transportation of cotton (other than absorbent, carded, or dyed) in bales, between El Paso and Sierra Blanca, serving all intermediate points.

The preponderance of interstate freight moving over the rail line between Pecos and El Paso is through traffic which the railway handles between El Paso, Fort Worth, and Dallas. Very little interstate less-than-carload traffic is

handled by the railway to intermediate points between Pecos and El Paso, and no such outbound traffic is mentioned. There are several interstate motor carriers operating over the route in question and all intermediate points are served.

The joint board concluded that public convenience and necessity require the furnishing by applicant, over the considered route, of a motor vehicle service supplementary of, auxiliary to, and coordinated with the rail service of the railway, and recommended the issuance of a certificate subject to the following conditions:

1. The service by motor vehicle to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of rail service of The Texas and Pacific Railway Company.
2. Applicant shall not serve any point not a station on the line of The Texas and Pacific Railway Company.
3. Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict applicant's operations by motor vehicle to service which is auxiliary to, or supplemental of, its rail service.

1348 Protestants have no objection to applicant concentrating cotton by truck into the compress at Fabens, and admit that the movement of merchandise traffic to and from the intermediate points is so small that the grant of authority to serve them would not injure protestants. Their point is that applicant has failed to make any substantial showing that public convenience and necessity require its service especially in view of the paucity of available merchandise traffic, the existing motor carrier service and its adequacy as testified to by several shipper witnesses. Protestants' view is amply supported by the record from the standpoint of a claim for need of an additional unrestricted motor vehicle service, but the joint board did not find that public convenience and necessity require such a service. The joint board found a need for motor vehicle service in substitution of the rail service, that is to say, a service which is auxiliary to or supplemental of the rail service, and we are of the opinion that this conclusion was proper. The railway has been serving the points for years and is under obligation to continue to do so. The volume of merchandise traffic is exceedingly small and the rail service in connection therewith is correspondingly poor. Improvement of that service through the sub-

stitution of motor vehicle service for rail service is in the public interest.

What protestants particularly fear is that applicant will engage in motor vehicle service independent of and unrelated to the rail service and in direct competition with the existing motor carriers, as well as engage in a substituted service over long distances in the transportation of through traffic moving between large and important points such as El Paso, on the instant route and Fort Worth and Dallas, on applicant's existing authorized routes, in con-
1349 nection with interstate traffic moving to and from the Pacific Coast, all contrary to the decision of the Commission in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5. They accordingly urge that if the application be not denied in its entirety applicant, in any event, should be restricted from transporting shipments (1) originating off-rail carrier beyond El Paso; (2) from transporting freight from El Paso to or beyond Big Spring; and (3) from transporting freight between the key points of Big Spring and El Paso.

Applicant asserts the first requested restriction should be denied since the Commission has repeatedly found interchange of freight by railroads and independent motor carriers is desirable in the public interest. The point raised by protestants, however, is that applicant should not be permitted to interchange traffic with motor carriers at El Paso. Public convenience and necessity require, and the authority recommended by the joint board permits the substitution of truck for train service in the handling of interstate traffic to and from the intermediate points requested whether such traffic is interchanged by the railway at El Paso with other railroads or motor carriers, but it does not permit an independent motor vehicle service by applicant through interchange with motor carriers. Such a service would be beyond that required by the present or future public convenience and necessity shown of record. It would be the same character of service performed by protestants and would not be in substitution of the rail service, but independent of the rail service and in direct competition with the existing rail and motor vehicle service. Under the circumstances there is no need for a limitation beyond that imposed by the joint board limiting the service to be performed by applicant to that which is auxiliary to or supplemental of the rail service of the railway.

1350 Applicant contends the second and third restrictions requested by protestants are already taken care of by condition 3 imposed in the certificate previously granted it authorizing operation between Pecos and Big Spring, and commonly referred to as the prior or subsequent rail haul condition. In considering whether a key point condition, such as protestants here urge, should be imposed, the joint board stated as follows:

> The record warrants the conclusion that public convenience and necessity require the furnishing by applicant over the considered route of service supplementary of and auxiliary to, and coordinated with, rail service, but does not establish a need for service by applicant which is not required in such coordinated operations. In *Kansas City Southern Transport Company, Inc., Common Carrier Application, supra,* a certificate was granted to a rail subsidiary to conduct a motor vehicle operation over routes paralleling rail lines of the parent rail carrier, and certain conditions were imposed in furtherance of limitation of service to that supplemental of or auxiliary to rail service, and to prevent duplication of, and competition with, then existing highway service. One of the restrictions imposed by the Commission prohibited transportation of shipments by motor vehicle between certain "key points". With respect to that condition, the situation in the instant case is somewhat different from that in the case cited. There the points to be served in the authorized operation included a number of large manufacturing and distributing centers from which there is a considerable movement of merchandise and other commodities, in less-than-carload quantities, to other points on the authorized routes. In the instant case, all points on the considered route, except the western terminus, are relatively small, and little less-than-carload traffic originates at such points. There are no places on the route which might properly be designated as "key points". Applicant's authority to operate between Pecos and Big Spring, issued in *Texas & P. Mtr. Transp. Co. Big Spring—Pecos Extension, supra,* contains a condition restricting shipments to be handled to those which applicant receives from or delivers to the railway company or its subsidiary lines under a through bill of lading covering, in addition to move-

ment by applicant, a prior or subsequent movement by rail, thus assuring that traffic handled over the now proposed route to and from places east of Pecos will be coordinated service auxiliary to and supplemental of rail service. For these reasons, any certificate granted should not, at this time, contain key point restrictions, but should otherwise be conditioned similarly to that in the cited Kansas City Southern case. See *Texas & P. Mtr. Transp. Co. Com. Car. Application*, 12 M. C. C. 37, 41.

1351 The authority recommended by the joint board between El Paso and Pecos, as well as applicant's existing authority between Pecos and Big Spring, is limited to motor vehicle service which is auxiliary to or supplemental of the rail service of the railway, but such service between Pecos and Big Spring is further limited to the handling of shipments which have had or will have an immediately prior or subsequent movement by rail. The proposal here is to handle westbound traffic out of Dallas and Fort Worth by rail to Monahans, an intermediate point between Big Spring and Pecos, and thence by motor vehicle as far as El Paso. Eastbound traffic is to be handled by motor vehicle from El Paso to Big Spring for delivery beyond by rail. Accordingly, applicant proposes to so handle through traffic, moving between such points as El Paso, Fort Worth and Dallas, whereas such traffic, as protestants contend, should move entirely by rail. The motor vehicle service performed in connection with this through traffic would, of course, be auxiliary to or supplemental of the rail service but it would be a service beyond that required by the present or future public convenience and necessity shown of record and would not result in any improvement in the handling of through traffic.

The distance between Dallas and El Paso is 649 miles; between Big Spring and El Paso approximately 354 miles; between Monahans and El Paso 254 miles; and between Pecos and El Paso 214 miles.

El Paso is a key point, being the western terminus of the rail line. Applicant is presently authorized to serve Pecos, which is also a key point having through train service from Dallas and Fort Worth as well as from El Paso. So far as the record shows there is no need for the substitution of motor vehicle service for rail service between

1352 Pecos and El Paso. The evidence shows a need for the substitution of motor vehicle service for train

service at the intermediate points. No local way-freight train service, as such, is maintained. The intermediate points are served by one of the through trains if it has sufficient time to do so and still make its transcontinental connections, but otherwise not. Accordingly, the rail service is poor and undependable. The substitution of the more efficient motor vehicle service to and from these points for the less efficient rail service, both in its direct and indirect effect, is in the public interest. It does not follow, however, that public convenience and necessity require the substitution of motor vehicle service for rail service between points where through train service is maintained, regardless of whether the shipments involve a prior or subsequent movement by rail.

Kansas City S. Transport Co., Inc., Com. Car. Application, supra, involved operating authority to perform motor vehicle service which is auxiliary to or supplemental of rail service but limited to the handling of shipments involving a prior or subsequent movement by rail. This latter limitation was rejected by the Commission because it did not permit complete substitution of motor vehicle service for local way-freight train service, and, on the other hand, permitted the substitution of motor vehicle service for through train service not required in the public interest. In lieu thereof a key point condition was imposed for the purpose of permitting the former but preventing the latter. The facts here presented require a similar key point limitation prohibiting the handling of shipments by motor vehicle between El Paso and Pecos or through, or to, or from more than one of said points. Such a limitation will

1353 in no way affect applicant's existing authority. It will permit complete substitution of motor vehicle service for train service between the way-station points and such key points as El Paso or Pecos or, in connection with applicant's existing authority, Monahans or Big Spring. It will not permit the substitution of motor vehicle service for through train service, nor will it permit all-motor service to or from El Paso in connection with shipments originating at or destined to points on applicant's existing route between Pecos and Big Spring, but neither will applicant's existing authority because shipments so handled would not involve a movement by rail either prior or subsequent to applicant's motor vehicle service between Pecos and Big Spring.

We find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, except money, high explosives, and corpses, between Pecos and El Paso, Texas, over U. S. Highway 80 serving all intermediate points which are stations on the rail line of The Texas and Pacific Railway Company, subject to the following conditions:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company, hereinafter called the Railway.
2. Applicant shall not serve any point not a station on the rail line of the Railway.
3. No shipments shall be transported by applicant between any of the following points, or through, or to, or from more than one of said points: El Paso and Pecos, Texas.
4. All contractual arrangements between applicant and the Railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

1354 5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of rail service.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act, and our rules and regulations thereunder; that a certificate authorizing such operation should be granted, and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act, and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application except to the extent that operations are authorized by the certificate herein granted.

1355 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 21st day of March, A. D. 1942.

No. MC-50544 (Sub-No. 11).

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS—EL PASO, TEXAS

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied effective May 8, 1942.

By the Commission, division 5.

W. P. BARTEL
Secretary

(SEAL)

1356 *Certificate of Public Convenience and Necessity*

No. MC 50544 Sub 11

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
a corporation, Dallas, Texas

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 7th day of May, A. D. 1942

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

GENERAL COMMODITIES, except money, and except dangerous explosives and corpses, over a regular route,

Between Pecos, Tex., and El Paso, Tex.:

From Pecos over U. S. Highway 80 to El Paso, and return over the same route.

Service is authorized to and from all intermediate points which are stations on the rail line of The Texas and Pacific Railway Company.

Service herein authorized is subject to the following conditions:

The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas and Pacific Railway Company, hereinafter called the Railway. Said carrier shall not serve any point not a station on the rail line of the Railway.

No shipments shall be transported by said carrier between any of the following points, or through, or to, or from more than one of said points: El Paso and Pecos, Texas.

1357 All contractual arrangements between said carrier and the Railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of rail service.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL
Secretary

(Seal)

1357-A Interstate Commerce Commission

Served June 7, 1943

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties of interest, within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 10 days after the final date for filing of exceptions.

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY—EXTENSION—PECOS–EL PASO

Submitted Decided

On further hearing, conditions 1 and 3 attached to certificate granted in prior report, 33 M. C. C. 38, authorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, in the transportation of general commodities, with certain exceptions, between Pecos and El Paso, Tex. over a regular route, modified. Order entered denying the application except to the extent granted by the prior report as modified herein.

Appearances as shown in prior report with addition of SCOTT DALY for certain protestants.

Report and Order on Further Hearing

RECOMMENDED BY JOINT BOARD NO. 77, COMPOSED OF WALLACE HOUSTON OF TEXAS

In the prior report herein, 33 M. C. C. 38, the Interstate Commerce Commission, division 5, found applicant, The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., entitled to a certificate of public convenience and necessity authorizing extension of operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, with certain exceptions, between Pecos and El Paso, Tex., over U. S. High-

way 80, serving all intermediate points which are stations on the rail line of The Texas and Pacific Railway Company, subject to certain conditions. The application in all other respects was denied. On petition of applicant, the proceeding was reopened for further hearing solely to determine what modification, if any, should be made in the conditions set forth in the report and what, if any, authority should be granted with respect to the transportation of freight between El Paso and Sierra Blanca, Tex. for the Texas and New Orleans Railroad Company.

1357-B The matter was referred to the joint board for further hearing and the recommendation of an appropriate order thereon. Hearing was held at Dallas on February 20, 1943. Dalby Motor Freight Lines, Inc. which previously opposed the application withdrew its protest prior to the further hearing. Several other motor carriers which opposed the application object to any change in the conditions attached to the certificate granted in the prior report.

In its report the Commission, division 5, upon consideration of the evidence submitted in support of the application concluded that public convenience and necessity require a motor-vehicle service supplementary of, auxiliary to, and co-ordinated with the rail service of The Texas and Pacific Railway Company, hereinafter called the Railway, between Pecos and El Paso and granted a certificate to the applicant on May 7, 1942 authorizing such operations subject to the following conditions: (1) The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Railway; (2) applicant shall not serve any point not a station on the rail line of the Railway; (3) no shipments shall be transported by applicant between any of the following points, or through, or to, or from more than one of said points, El Paso and Pecos; (4) all contractual arrangements between applicant and the Railway shall be reported to the Commission and shall be subject to revision, if and as the Commission shall find it to be necessary in order that such arrangements shall be fair and equitable to the parties; and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

Applicant contends that condition 1 obstructs its operation as an independent motor carrier and prevents the handling of less than carload traffic for the Texas and New

Orleans Railroad Company between El Paso and Sierra Blanca, Tex. and intermediate points and that condition 3 has the effect of making Pecos a key point which prevents it from receiving any real benefit from the authority granted. It requests the elimination of such conditions or as an alternative their revision as follows:

(1) The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Railway and the Texas and New Orleans Railroad Company.

(3) No shipment originating at or destined to points east of Big Spring, Tex., shall be transported by applicant unless the movement east of Big Spring shall be performed by the rail service of the Railway into or out of Big Spring, in substitution for the service of the applicant.

Applicant is a wholly owned subsidiary of the Railway. It operates as a common carrier by motor vehicle in the general territory served by the Railway and its routes parallel the rail line throughout a large portion of the operation including operation over highways between Dallas, Fort Worth and El Paso. The rails between El Paso and Sierra Blanca, a distance of 92 miles, are operated over jointly by the Railway and the Texas and New Orleans Railroad Company and the stations and other facilities are used jointly except at El Paso where separate facilities are maintained. In an endeavor to improve its service
1357-C between the described points the Texas and New Orleans Railroad Company entered into a contract with the applicant, dated March 28, 1942, retroactively effective September 1, 1941, under the terms of which applicant agreed to perform less than carload service for the Texas and New Orleans Railroad Company on interstate freight originating at or destined to El Paso and Sierra Blanca and intermediate points. Condition 1 attached to the certificate restricts applicant from performing such service. The Commission, division 5, in its report found that public convenience and necessity require the substitution of truck for train service in the handling of interstate traffic between the described points but not an independent motor vehicle service by applicant through interchange with motor carriers. The proposed revision will insure a co-ordinated rail-truck service between the described points. Protestant motor carriers are not handling this traffic at present and will not be adversely affected if applicant is permitted to perform the proposed service. The traffic

involved is relatively light and can be handled by applicant without the use of additional equipment. The proposed operation will afford an improved service to and from the described points and will effectuate a considerable saving in operating expenses through the elimination of duplicating services. Based upon the evidence of record the joint board concludes that condition 1 should be revised in accordance with applicant's proposal.

In consideration of condition 3 it should be noted that the Commission, division 5, in its report stated:

> "The proposal here is to handle west-bound traffic out of Dallas and Fort Worth by rail to Monahans, an intermediate point between Big Spring and Pecos, and thence by motor vehicle as far as El Paso. East-bound traffic is to be handled by motor vehicle from El Paso to Big Spring for delivery beyond by rail. Accordingly, applicant proposes to so handle through traffic moving between such points as El Paso, Fort Worth, and Dallas, whereas such traffic, as protestants contend, should move entirely by rail. The motor-vehicle service performed in connection with this through traffic would, of course, be auxiliary to or supplemental of the rail service, but it would be a service beyond that required by the present or future public convenience and necessity shown of record and would not result in any improvement in the handling of through traffic."
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> "El Paso is a key point, being the western terminus of the rail line. Applicant is at present authorized to serve Pecos, which is also a key point having through train service from Dallas and Fort Worth as well as from El Paso."

Applicant contends that the conclusions reached by the Commission as stated above are in error. At the time of the original hearing, the Railway operated a through merchandise car from Dallas and Fort Worth to Monahans but due to changed conditions this practice was discontinued. Under applicant's present operation, freight from Dallas and eastern points to Pecos and stations west thereof, excluding El Paso, is handled by box car to Big Spring and thence by motor vehicle to destination. Tonnage for El Paso and points beyond is handled by box car from Dallas to Big Spring where the car is worked and reforwarded to El Paso. Shipments originating at Pecos and moving to El Paso and points west

1357-D

thereof are trucked east to Big Spring and loaded into the box car aforedescribed for movement to break bulk at El Paso. From stations west of Pecos, tonnage to El Paso, and points west thereof is handled by motor vehicle to El Paso. Eastbound freight from El Paso is handled by motor vehicle to stations east thereof except Pecos and points between Pecos and Monahans, Tex. Freight to the latter points is moved by box car to Monahans and thence by motor vehicle to destination. Eastbound freight from stations east of El Paso, that is between Ysleta and Pecos, is handled by motor vehicle to Big Spring and thence by box car to destination. A box car is also loaded at El Paso to break bulk at Dallas or Fort Worth. During the 4 months period ending December, 1942 a daily average of 10,266 pounds of freight was carried in the Dallas-Fort Worth car, a daily average of 13,669 pounds in the car worked and reforwarded from Big Spring to Dallas and a daily average of 6,147 pounds in the Monahans car.[1]

If the proposed revisions are approved, tonnage originating at El Paso and points west thereof for points on the described route will be handled by motor vehicle and freight destined east of Big Spring will be handled by motor vehicle to that point and by rail beyond. Westbound tonnage destined to points on the described route will be transported by box car to Big Spring and thence by motor vehicle. Freight from points on the described route to El Paso and points west thereof will move by truck to El Paso. Under the present proposal box cars now loaded daily at El Paso for movement to Monahans and to Fort Worth or Dallas and at Big Spring for movement to El Paso will be eliminated thus effectuating a saving of approximately 2,426 box car miles daily. The transportation of freight from Dallas to El Paso and from El Paso to Pecos and Dallas will also be expedited by approximately 24 hours.

Applicant asserts that Pecos is not a key point as that term is used in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5. In that case the Commission, division 5, in this connection stated as follows:

> "There are certain larger points on the lines of the respective railroads here involved between which freight trains are operated. Such trains include package or merchandise cars which are set out at the principal points, commonly referred to as key or break-bulk points."

[1] Cars lightly loaded have been operated under temporary authorities granted by the Office of Defense Transportation.

Pecos has a population of 4,855 and the communities between Pecos and El Paso have a total population of 6,987. Pecos is neither a division nor break-bulk point on the Railway and rail cars are not set out nor do they originate at that point as there is insufficient tonnage to justify the service. Rail merchandise service of the Railway does not extend west of Big Spring as the territory between Big Spring and El Paso, a distance of 347 miles, is sparsely settled and tonnage originating or terminating at points on the route is so light that operation of a regularly scheduled merchandise train is impracticable. Highway service as restricted by condition 3 cannot be effectually co-ordinated with the rail service of the Railway because, as aforestated, merchandise cars are not set out or originate at Pecos. While the Commission, division 5, in its re-
1357-E port found a substantial public need for the proposed service, and the instant record confirms this conclusion, the annexation of condition 3 to the authority granted applicant has restricted it from rendering in full the service contemplated. Applicant in its petition suggests the substitution of Big Spring for Pecos as a key point in condition 3 but on brief it asserts that such a key point designation would not fully correct the situation as it would still be prevented from handling freight from El Paso to Big Spring by motor vehicle as such tonnage would have to be transferred to local way freight at some point west of Big Spring and again at the latter point to the rail merchandise car for movement east. In lieu of a key point designation applicant suggests that the condition be rephrased to restrict it from handling freight originating at or destined to points east of Big Spring unless the movement east of that point shall be performed by the rail service of the Railway into or out of Big Spring.

Protestant motor carriers appearing at the further hearing oppose the removal of the described restriction, contending that such action would permit applicant to render a common motor carrier service independent of and unrelated to the Railway service in direct competition with existing motor carriers operating in the territory. As stated in the prior report what protestant motor carriers apparently fear in particular is that applicant will engage in a substituted service over long distances in the transportation of through traffic moving between such principal points as El Paso, Fort Worth and Dallas. In the opinion of the joint board the restriction proposed by applicant will provide ade-

quate protection to competing motor carriers in the movement of through traffic and will at the same time permit a more flexible substitution of motor vehicle service for train service between way station points west of Big Spring, including the latter, than is presently the case. The evidence shows that the public convenience and necessity require such an improvement in applicant's operation. Based upon the evidence, the joint board concludes that condition 3 should be revised as indicated above.

On brief, the Dallas Chamber of Commerce and the Fort Worth Freight Bureau argue at some length to the effect that applicant's service should not be limited to that which is auxiliary to or supplemental of the rail service of the Railway, if such restriction prohibits applicant from being a party to tariffs containing all motor or joint rates with motor carriers. This matter was before the Com-
1357-F mission in No. MC-50544[2] and will not be considered in this report.

The joint board finds on further hearing that conditions 1 and 3 as contained in the findings of the Commission's report herein and included in the certificate granted applicant be modified and revised to read as follows:

(1) The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Texas and Pacific Railway Company and the Texas and New Orleans Railroad Company.

(3) No shipment originating at or destined to points east of Big Spring, Tex., shall be transported by applicant unless the movement east of Big Spring shall be per-

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[2] Proceedings embraced in report include: No. MC-50544, The Texas and Pacific Motor Transport Company Common Carrier Application; No. MC-50544 (Sub-No. 1), The Texas and Pacific Motor Transport Common Carrier Application-Louisiana; No. MC-50544 (Sub-No. 2), The Texas and Pacific Motor Transport Company Extension-Wills Point-Gladewater, Texas; No. MC-50544 (Sub-No. 3), The Texas and Pacific Motor Transport Company-Extension-Big Spring-Pecos, Texas; No. MC-50544 (Sub-No. 4), The Texas and Pacific Motor Transport Company Extension-Marshall-Texarkana, Texas; No. MC-50544 (Sub-No. 7), The Texas and Pacific Motor Transport Company Extension of Operations-Alternate Routes: No. MC-50544 (Sub-No. 9), The Texas and Pacific Motor Transport Company Extension of Operations-Mesquite-Forney, Texas; No. MC-50544 (Sub. No. 10), The Texas and Pacific Motor Transport Company Extension-Big Spring-Hobbs; No. MC-50544 (Sub-No. 14), The Texas and Pacific Motor Transport Company Extension-Fort Worth, Texas.

formed by the rail service of the Railway into or out of Big Spring.

It is recommended that the appended order be entered.

By joint board No. 77.

(Signature) WALLACE HUGHSTON

1358 Recommended by joint board No. 77 composed of Wallace Hughston of Texas (Signature) WALLACE HUGHSTON

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the day of A. D. 1943.

No. MC-50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—PECOS—EL PASO.

It appearing, That in the prior report herein 33 M. C. C. 38, the Interstate Commerce Commission, division 5, authorized the issuance to applicant of a certificate to conduct certain operations as a common carrier by motor vehicle, subject to certain conditions, in interstate or foreign commerce, and otherwise denied the application;

It further appearing, That on petition of applicant by order of December 7, 1942, the proceeding was reopened for further hearing solely to determine what modification, if any, should be made in the conditions set forth in the findings in the report, and what, if any, authority should be granted with respect to the transportation of freight between El Paso and Sierra Blanca, Tex. for the Texas and New Orleans Railroad Company;

And it further appearing, That such further hearing has been held by joint board No. 77, which board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted;

It is ordered, That said application, to the extent it was reopened, and except to the extent granted herein and in the prior report, be, and it is hereby, denied.

And it is further ordered, That this order shall be effective.

By the Commission, division 5.

(Seal)

W. P. BARTEL
Secretary

1359 *Order*

Interstate Commerce Commission

No. MC 50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS—EL PASO
Dallas, Texas

Present: William E. Lee, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

The recommended order of Joint Board No. 77 in the above-entitled proceeding having been filed with the Commission and duly served on June 7, 1943, and good cause therefor appearing:

It is ordered, That the date on which said recommended order shall become the order of the Commission and become effective, be, and it is hereby, postponed to July 8, 1943, unless prior to that date said order is stayed or further postponed by the Commission.

Dated at Washington, D. C., this 26th day of June, A. D. 1943.

By the Commission, Commissioner Lee.

W. P. BARTEL
Secretary

(Seal)

1360 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 7th day of July, A. D. 1943.

No. MC 50544 (Sub-No. 11)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
EXTENSION—PECOS—EL PASO
Dallas, Texas

It appearing, That the above-entitled matter has been referred by the Commission, division 5, to Joint Board No. 77 for hearing and recommendation of an appropriate order thereon; that said hearing has been had; that a recommended order, accompanied by a report containing the reasons therefor, was filed and served on June 7, 1943, as provided in the Interstate Commerce Act;

And it further appearing, That on June 26, 1943, the said division postponed to July 8, 1943, the date on which the said recommended order should become the order of the Commission and become effective;

It is ordered, That the taking effect of the said recommended order in the above-entitled matter be, and it is hereby, stayed pending the further order of the Commission.

By the Commission, division 5.

(Seal)

W. P. BARTEL
Secretary

1361

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 16th day of March A. D. 1942.

No. MC-50544 (Sub-No. 12)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY EXTENSION—TEXARKANA

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by joint board No. 152, which board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon compliance with all requirements of sections 215 and 217 of the Interstate Commerce Act, and with the rules and regulations thereunder, a certificate be issued to applicant authorizing operation, in interstate or foreign commerce as a common carrier by motor vehicle, of the commodities described and in the manner described in the findings of said report.

It is further ordered, That the certificate be issued upon the condition that operation thereunder shall be conducted in accordance with all rules, regulations, and requirements relating thereto issued by the Commission under said act.

It is further ordered, That in all other respects said application be, and it is hereby, denied.

And it is further ordered, That this order shall be effective on March 16, 1942.

By the Commission, division 5.

(Seal)

W. P. Bartel.
Secretary

1362 *Certificate of Public Convenience and Necessity*

No. MC 50544 Sub 12

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
A CORPORATION,
Dallas, Texas

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 4th day of May, A. D., 1942

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, over a regular route,

Between Texarkana, Tex.-Ark., and Fort Worth, Tex.:

From Texarkana over U. S. Highway 82 to Whitesboro, Tex., thence over Texas Highway 10 to Denton, Tex., and thence over U. S. Highway 377 to Fort Worth, and return over the same route.

Service is authorized to and from the intermediate points of Lone Star Shell Loading Plant and the Red River Ordnance Depot, located approximately 16 and 20 miles west of Texarkana, respectively, without restriction; all other intermediate points and the off-route point of Annona, Tex., are subject to the following conditions:

The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplementary of, the rail service of the Texas and Pacific Railway Company.

Said carrier shall not serve any point not a station on the rail line of the Texas and Pacific Railway Company.

No shipments shall be transported by said carrier as a common carrier by motor vehicle between any of the following points or through or to or from more than one of said points: Fort Worth, Tex., Texarkana, Tex.-Ark.

1363 Such further specific conditions as we in the future may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to or supplementary of the rail service of the Texas and Pacific Railway Company.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

(Seal)

W. P. BARTEL
Secretary

1364

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washintgon, D. C., on the 3rd day of October, A. D. 1941

No. MC-50544 (Sub-No. 14)

TEXAS & PACIFIC MOTOR TRANSPORT COMPANY—
EXTENSION—FORT WORTH, TEXAS

Investigation of the matters and things involved in this proceeding have been made, said application having been duly referred to joint board No. 77 for appropriate proceedings which board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is made a part hereof:

It is ordered, That upon compliance with all requirements of sections 215 and 217 of the Interstate Commerce Act and the rules and regulations prescribed by this Commission thereunder, a certificate of public convenience and necessity be issued to Texas & Pacific Motor Transport Company, of Dallas, Texas, authorizing an extension of

operations, in interstate or foreign commerce, as a common carrier by motor vehicle, of the commodities, between the points, and in the manner described in the findings of said report.

It is further ordered, That the above-described certificate be issued upon the condition that operations thereunder shall be conducted in accordance with the rules, regulations, and requirements relating thereto issued by the Commission under the said act.

It is further ordered, That in all other respects the said application be, and it is hereby, denied.

And it is further ordered, That this order shall be effective on October 3, 1941.

By the Commission, division 5.

W. P. Bartel
Secretary

(Seal)

1365 *Certificate of Public Convenience and Necessity*

No. MC-50544 Sub 14

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS.

At a Session of the INTERSTATE COMMERCE COMMISSION. Division 5, held at its office in Washington, D. C., on the 8th day of November, A. D., 1941.

AFTER DUE INVESTIGATION, It appearing that the above named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, over irregular routes,

Between Ft. Worth, Tex., on the one hand, and on the other, the sites of the bomber assembly plant and the anchorage and dock space located approximately six and nine miles, respectively, nortwest of Fort Worth.

Service herein authorized is subject to the following conditions:

The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the railway and its subsidiary rail lines.

All contractual arrangements between said carrier and the railway shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service.

1366 IT IS FURTHER ORDERED, That this certificate shall remain in force for a period of nintey days from and after the date hereof; *provided*, however, that if, during said period of ninety days, the order in this proceeding authorizing the issuance hereof shall not have been set aside, vacated or modified, this certificate shall thereupon become permanent.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

(SEAL)

W. P. BARTEL
Secretary

1368 This report will not be printed in full in the permanent series of Motor Carrier Reports of the Commission.

Interstate Commerce Commission

No. MC-50544 (Sub-No. 19).

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, EXTENSION—ALEDO, TEXAS

Submitted May 15, 1942 Decided June 22, 1942

Public convenience and necessity found to require an extension of operations by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, in coordinated motor-rail service, to and from Aledo, Brazos, Santo, Gordon, and Mingus, Tex., as off-route points in connection with applicant's presently authorized regular route operations. Issuance of a certificate subject to condition approved upon compliance by applicant with certain requirements, and applicantion in all other respects denied.

W. O. Reed for applicant.

J. G. Luhrsen for intervener.

Report of the Commission

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND PATTERSON

BY DIVISION 5:

No protest against this application having been filed, it was handled under a modified procedure wherein no hearing was held. Exceptions to the recommended order of the joint board were filed by the Railway Labor Executives' Association. Our conclusions differ somewhat from those recommended.

By application filed December 11, 1941, as amended, The Texas and Pacific Motor Transport Company, a corporation, of Dallas, Tex., seeks a certificate of public convenience and necessity, authorizing an extension of operations, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, in coordinated motor-rail service, to and from Aledo, Brazos, Santos, Gordon, and Mingus, Tex., as off-route points to its presently authorized regular route operations.

The joint board found that there was a public need for applicant's proposed operations in coordinated motor-rail

service, and recommended that applicant be granted a certificate authorizing such operations, subject to the following conditions:

(1) The service by motor vehicle to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company.

(2) All contractual arrangements between applicant and The Texas and Pacific Railway Company shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangement shall be fair and equitable to the parties.

1369 (3) Such further specific conditions as the Commission, in the future, may find necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

Applicant is a wholly owned subsidiary of The Texas and Pacific Railway Company, hereinafter called the railroad. The routes over which it operates parallel the rail line of the railroad, and the points named in the instant application from and to which it proposes to operate are stations on the line of the railroad. Applicant has shown that existing rail service to and from the points named, on less-than-carload shipments, is poor and unsatisfactory and that there is a need for a motor carrier service which will be auxiliary to and supplemental of rail service. It is not shown, however, that there is a need for any type of motor carrier service by applicant from and to the points named other than that which is purely auxiliary to or supplemental of rail service of the railroad; and we conclude that the joint board recognized that to be the fact in recommending the imposition of conditions (1), (2), and (3) specified above, upon grant of authority hereunder.

The intervener contends that any certificate issued to applicant authorizing the proposed operation should contain two other conditions as follows: (1) Applicant shall not serve, or interchange traffic at, any point not a station on the line of the railroad; and (2) shipments transported by applicant shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering, in addition to a motor carrier movement by applicant, a prior or subsequent movement by rail.

In *Kansas City S. Transport Co., Inc. Com. Car. Application*, 10 M. C. C. 221, we discussed at some length the ques-

tion of what restrictions should be imposed upon an applicant seeking authority to institute a coordinated motor-rail service. In that case, we found that public convenience and necessity required the proposed service to the extent it would be auxiliary to, or supplemental of, rail service, and authorized the issuance of a certificate subject to five conditions which were imposed for the purpose of limiting the authorized operations to those which would be in fact auxiliary to, or supplemental of, rail service.

Since it is clear that the only need for applicant's proposed operations is confined to a service which will be auxiliary to, or supplemental of, and coordinated with the rail service, we shall discuss the propriety of imposing conditions other than those specified by the joint board.

Applicant does not seek authority to serve points other than those which are stations on the line of the railroad, and, consequently, we conclude that an appropriate condition in that respect is in order. Furthermore, applicant has failed to establish that there is any need for its transportation of shipments which do not have a prior or subsequent movement by rail, and it follows that an apppropriate condition in that respect should be imposed.

In *Kansas City S. Transport Co., Inc., Com. Car. Application*, 28 M. C. C. 5, decided January 24, 1941, the entire Commission found that that carrier, a railroad-controlled subsidiary, should not be authorized to transport shipments between rail key points or through or to or from more than one rail key point. That restriction was imposed to
1370 prevent a railroad-controlled motor carrier from instituting a motor carrier service between points on the stituting a motor carrier service between points on the rail line which were adequately served by the rail carrier. The conditions which warranted such a restriction in that case are not here present inasmuch as applicant herein is not seeking authority to operate between rail key points.

Applicant has established that there is a public need and demand for a more expeditious service in the transportation of less-than-carload freight from and to the points it proposes to serve, and that a grant of the authority sought will enable the railroad to release some of its rolling stock for more urgent transportation needs. Applicant owns equipment which is adequate for its transportation needs, and it is fit, willing, and able, financially and otherwise, to conduct the proposed operation.

We find that public convenience and necessity require an extension of operations by applicant, in interstate or

foreign commerce, as a common carrier by motor vehicle, of general commodities, in coordinated motor-rail service, to and from Aledo, Brazos, Santo, Gordon, and Mingus, Tex., as off-route points in connection with applicant's presently authorized regular route operations, subject to the following conditions:

(1) The service by motor vehicle to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company, hereinafter called the railroad.

(2) Applicant shall not serve any point not a station on the rail line of the railroad.

(3) Shipments transported by applicant shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

(4) All contractual arrangements between applicant and the railroad shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

(5) Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the act and our rules and regulations thereunder; that an appropriate certificate should be granted; and that the application should be denied in all other respects.

Upon compliance by applicant with the requirements of sections 215 and 217 of the Interstate Commerce Act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application except to the extent a certificate is granted herein.

1371 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 22d day of June, A. D. 1942.

No. MC-50544 (Sub-No. 19)

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, EXTENSION—ALEDO, TEXAS

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby denied, effective August 7, 1942.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

1372 *Certificate of Public Convenience and Necessity.* C-15.1

No. MC-50544 Sub 19.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 21st day of October, A. D. 1942.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may

hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, over regular routes,

Service is authorized to and from Aledo, Brazos, Santo, Gordon, and Mingus, Tex., as off-route points in connection with said carrier's previously authorized regular route operations.

The transportation service authorized above is subject to the following conditions:

The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of The Texas and Pacific Railway Company, hereinafter called the railroad.

Said carrier shall not serve any point not a station on the rail line of the railroad.

Shipments transported by said carrier shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering, in addition to movement by said carrier, a prior or subsequent movement by rail.

All contractual arrangements between said carrier and the railroad shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

1373 Such further specific conditions as we, in the future may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

(SEAL)

W. P. BARTEL,
Secretary.

1374 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 6th day of July A. D., 1942.

No. MC-50544 (Sub-No. 22).

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, EXTENSION—DALLAS—FORT WORTH.

Investigation of the matters and things involved in this proceeding having been made, said application having been duly referred to joint board No. 77 for appropriate proceedings, which board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That upon compliance with all the requirements of sections 215 and 217 of the Interstate Commerce Act, and with the rules and regulations prescribed by this Commission thereunder, a certificate of public convenience and necessity be issued to The Texas and Pacific Motor Transport Company, of Dallas, Tex., authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, of the commodities, between the points, and in the manner described in the findings of said report.

It is further ordered, That the above-described certificate be issued upon the condition that operations thereunder shall be conducted in accordance with the rules, regulations, and requirements relating thereto, issued by the Commission under the said act.

And it is further ordered, That this order shall be effective on July 6, 1942.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

1375 *Certificate of Public Convenience and Necessity*

No. MC 50544 Sub 22

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, A CORPORATION, DALLAS, TEXAS.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 12th day of September, A. D. 1942.

AFTER DUE INVESTIGATION, It appearing that the above named carrier has complied with all applicable provisions

of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached, to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment, over regular routes,

Between Dallas, Tex., and Fort Worth, Tex.:

From Dallas over unnumbered highways via Irwin and Sowers, Tex., to Euless, Tex., thence over Texas Highway 183 to junction Texas Highway 121, thence over Texas Highway 121 to Fort Worth, and return over the same route.

Service is authorized to and from the off-route points which are stations on the line of the Texas and Pacific Railway Company between Dallas and Fort Worth.

Service authorized herein is subject to the following conditions:

Said carrier shall not render service from or to, or interchange traffic at, any point not a station on a rail line of the Texas and Pacific Railway Company.

1376 The authority herein considered shall be subject to such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, train service of said railway company, and in order to ensure that the service rendered shall not unduly restrain competition.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

1377 *T. & P. Motor Transport Company's Exhibit 1*

Interstate Commerce Commission

No. MC-F-3[1]

PENNSYLVANIA TRUCK LINES, INCORPORATED, ACQUISITION OF CONTROL OF BARKER MOTOR FREIGHT, INCORPORATED

Submitted July 15, 1936 Decided October 8, 1936

Proposed purchase by the Barker Motor Freight, Incorporated, of the property and certificates of Barker Motor Freight Lines, and acquisition by Pennsylvania Truck Lines, Incorporated, of control of the Barker Motor Freight, Incorporated, by purchase of capital stock not approved or authorized at this time. Order of approval and authorization deferred pending acceptance of conditions.

H. Z. Maxwell, J. R. Turney, and *Sherman Randall* for applicants in no. MC-F-3 and no. MC-F-13 and for other common carriers.

G. H. Dilla and Leo J. Culliton for protestants.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS EASTMAN, LEE AND CASKIE

BY DIVISION 5:

The Barker Motor Freight, Incorporated, hereinafter called the new company, by appropriate application filed April 3, 1936, recorded in no. MC-F-13, shown in the footnote, seeks authority under section 213, Motor Carrier Act, 1935, to purchase the property and certificates of Barker Motor Freight Lines. Pennsylvania Transfer Company

[1] This report also embraces No. MC-F-13, Barker Motor Freight, Incorporated, Purchase of Property and Certificates of D. P. and Floyd Barker, Doing Business as Barker Motor Freight Lines.

of Pittsburgh[2] by separate application filed February 21, 1936, recorded in no. MC-F-3, seeks authority to acquire control of the new company by purchase of its entire issued and outstanding capital stock. A copy of each application was forwarded to the governor of each State in which applicants operate. The applications indicated that the ultimate control of these properties would rest in the Pennsylvania Railroad Company. The governor of each State in which any part of the properties or operations of the carriers involved in the proposed transactions is situated, also such carriers and the applicants, and other parties
1378 known to have a substantial interest in the proceedings, were notified of the time and place for a public hearing on the applications. The applications, which involve directly related and interdependent transactions, were heard on a consolidated record and are herein considered in one report. While no formal exceptions were filed to the order recommended by the examiner, we stayed that order on July 14, 1936.

At the hearing, applicants submitted a copy of a certificate issued February 29, 1936, by the Commonwealth of Pennsylvania, authorizing the change in name of Pennsylvania Transfer Company of Pittsburgh to Pennsylvania Truck Lines, Incorporated, and a statement containing the consent of the stockholders of the new company to such change in name and the substitution of the new name throughout both applications and in the copies of the purchase agreement filed therewith. Intervening petitions opposing the granting of the applications were filed on behalf of the Motor Truck Association of Ohio and the Crawley Transportation Company. No representations have been made by any State authority. By agreement of the parties, the applications and accompanying exhibits, including the purchase agreement, were incorporated in and made a part of the record.

Barker Motor Freight Lines, a partnership composed of D. P. Barker and Floyd Barker, the property and certificates of which the new company proposes to purchase, and which for convenience will be designated hereinafter as the partnership, is alleged to have been engaged from 1922 to April 1, 1936, in the transportation of property by motor vehicle in the States of Ohio, Michigan, West Virginia,

[2] The application as originally filed showed Pennsylvania Transfer Company of Pittsburgh as applicant. The corporate name was changed by competent authority on February 29, 1936, to that shown in the title of the case.

Kentucky, Indiana, and Pennsylvania. Application for a certificate under the so-called "grandfather" clause of the Motor Carrier Act, 1935, has been filed to authorize continuance of these operations. Because of the personal risk involved in a partnership undertaking and of the complications that might result from the death of any partner, it was decided by the partners in July 1935, that a corporation be formed to take over the business. On July, 26, 1935, the new company was incorporated under the laws of Ohio, with an authorized capital stock of $15,000, to carry on the business of transportation of property by motor vehicle. On February 4, 1936, its charter was amended to authorize also transportation of persons by motor vehicle and an increase in its capital stock to $100,000.

On or about December 1, 1935, Pennsylvania Transfer Company of Pittsburgh (Pennsylvania Truck Lines, Incorporated), hereinafter called the vendee, instituted negotiations with the partners to purchase the entire capital stock of the new company. The testimony of Floyd Barker shows that the partnership business was developed by him from a 1-truck operation in 1922 to an operation com-
1379 prising 34 units of automotive equipment and from 50 to 55 employees at the time of the dissolution thereof, and that all extensions of the business were accomplished directly from earnings derived from operations. He also testified that the demand for service had grown in recent years beyond the ability of the partnership to finance and furnish the necessary equipment and personnel adequately to serve the public and to meet the various other demands on the business, such as insurance, workmen's compensation, and other regulatory requirements, and stated that it was necessary on numerous occasions to hold over tonnage and at times actually to refuse shipments, on account of insufficient equipment. In view of these financial difficulties and other considerations, the former partners arranged to sell the stock of the new company to the vendee. This, they felt, could and would obviate the disadvantages referred to, because of the greater resources and credit of such vendee. An agreement to this end was entered into between the former partners, hereinafter called the vendors, and the vendee on January 30, 1936, whereby it was agreed among other things, that vendors would take steps immediately to complete the incorporation of the new company under the laws of Ohio and would apply to the Public Utilities Commission of that State for authority to issue stock as required by the vendee, such stock to be issued for

cash; that vendee would lend the partners the amount required to pay for such stock, the loan to be represented by a note secured by the stock to be issued; that vendee would have the right and privilege of voting the stock while held as security; that vendors would cause the properties of the partnership to be conveyed to the new company free and clear of all encumbrances; and that the vendee would purchase the stock of the new company for the sum of $25,000, payable $10,000 when valid title to all the property, certificates, etc., is vested in the new company and $15,000 when the sale and purchase of the stock is approved by the Interstate Commerce Commission.

Vendee was incorporated under the laws of Pennsylvania on November 13, 1925, and is part of a group of companies controlled by the American Contract and Trust Company, hereinafter called the Contract Company, a wholly owned subsidiary of the Pennsylvania Railroad Company, hereinafter called the railroad. The Contract Company, controls vendee through ownership of 71 percent of its common stock and 100 percent of its preferred stock. Vendee owns 190 motor vehicles, including trucks, tractors, trailers, etc., with which it engages in interstate commerce as a motor carrier of property in the States of Pennsylvania, Ohio, Michigan, West Virginia, and Maryland. The bulk of its operations is carried on in Pennsylvania, where it renders a general call and demand service between all points within a 50-mile radius of Pittsburgh, and a
1380 station-to-station service for the railroad over about 40 routes, maximum haul 50 miles per route, which parallel the tracks of that line. The testimony indicates that it performs a collection and delivery service for the railroad in the Pittsburgh, Pa., and Detroit, Mich., areas and along certain station-to-station routes in Pennsylvania, and that it also handles interstate freight in call and demand service to points in other States within a radius of 150 miles from Pittsburgh.

The income accounts of the partnership show operating results for the periods stated as follows:

1381

	1936 (2 mos.)	1935	1934	1933	1932
Total operating revenues	$22,571.82	$127,536.65	$98,164.99	$83,399.42	$64,749.93
Total operating expenses	25,335.26	125,570.07	96,796.46	81,618.97	57,858.04
Net revenue from operations	[2] 763.44	1,966.58	1,368.53	1,780.45	6,957.89
Operating ratio (percent)	(103)	(98)	(99)	(98)	(89)

[1] Before taxes.

[2] Deficit in italics.

The partnership's general balance sheet as of February 29, 1936, shows assets aggregating $39,809.84, consisting of automotive equipment $23,990.15, other operating assets $1,968.34, organization and franchises $2,450, current assets $9,790.40, and deferred debits $1,610.95. Liabilities are shown as partnership investment $10,087.54, equipment notes $7,122.45, current liabilities $10,036.40, and deferred credits $12,563.45. Current assets include, among other things, $179.09 cash, $7,668.99 accounts receivable, and $962.83 material and supplies. Current liabilities consist principally of accounts payable of $8,962.34 and notes payable of $400. Based on depreciation of $12,292.25 accrued to February 29, 1936, the current value of the automotive equipment is apparently $11,697.90.

Under the terms of the agreement the new company will receive in the transaction physical property valued at $14,357.87, consisting of automotive, garage and office equipment depreciated to $13,395.04, and material and supplies of $962.83. In addition, it will acquire an intangible item valued at $2,450, representing actual organization and franchise cost. The total of these items is $8,192.13 less than the agreed purchase price of the properties to be acquired and, according to the testimony, this difference represents going-concern value. The vice president of vendee testified that it would require the expenditure of $10,000, and possibly more, to initiate and develop a new business comparable in scope to that already established by the partnership.

The income accounts of the vendee show operating results for the periods as follows:

	1936 (2 mos.)	1935	1934	1933
Total operating revenues	$174,408.91	$595,765.58	$337,862.53	$174,180.02
Total operating expenses	158,366.34	519,907.82	293,384.96	151,237.06
Net revenue from operations[1]	16,042.57	75,857.76	44,477.57	22,943.02
Operating ratio (percent)	(90)	(87)	(87)	(87)

[1] Before taxes.

It will be noted that the operating ratio of the vendee has been more favorable than that of the partnership.

Vendee's general balance sheet statement as of March 31, 1936, shows assets aggregating $663,197.82, including transportation property $414,837.02, nontransportation property $10,305.85 representing investment in stock of a controlled company, current assets $206,728.84, and deferred debits $31,326.11. Vendee's liabilities are shown as capital stock $180,320, unappropriated surplus $78,588.76, long-term debt $51,467.38, current liabilities $117,716.73,

and deferred credits $235,104.95. The item of current assets includes $32,098 cash and $168,984.27 accounts receivable. Current liabilities consist principally of accounts payable amounting to $98,113.08 and accrued taxes of $9,564.78. The item of deferred credits is made up mainly of depreciation reserves, $166,231, and other reserves, $24,467.06. Automotive equipment of vendee is shown as costing $266,090.63, with accrued depreciation to March 31, 1936, of $137,379.47, or approximately 52 percent of the cost. Rates of depreciation on the various types of automotive equipment range from 16⅔ percent to 33⅓ percent per annum.

The primary purpose of the proposed acquisition of control is to permit vendee to establish a coordinated truck-and-rail service in Ohio similar to that now furnished by it in the territory east thereof. In line with this program, it is vendee's intention to establish zone or concentration stations to which less-than-carload freight will be handled from points contiguous thereto by truck and assembled in full carload lots and thence forwarded by rail to other such stations for distribution by truck to the consignees. In addition, vendee proposes to continue the present over-highway operations of the partnership, but with improved service and greater frequency and regularity of schedules.

It is represented that the acquisition and operation of of the properties of the partnership by the new company under the control of vendee, as proposed, will promote the public interest and be to public advantage by permitting the establishment of a coordinated truck-and-rail service properly synchronized under a single management.

This dual form of transportation is expected to fur-
1382 nish a more expeditious and economical service. Witnesses for the vendee claim that, in many instances, such coordinated service has reduced by as much as 24 hours the time required to deliver less-than-carload freight entirely by rail. In that connection the supervising agent for the western region of the railroad testified, by way of illustration, that an all-rail shipment from Chicago, Ill., to Geneva, Ind., leaving Chicago Monday evening would arrive at Fort Wayne, Ind., Tuesday morning, at which point the freight would be transferred to a peddler car and thence forwarded to destination, arriving Wednesday morning, or the second day after shipment. He stated that by using truck-rail facilities this shipment would be forwarded as described to Fort Wayne, arriving Tuesday morning. There it would immediately be transferred to a truck and carried

on to destination, arriving the same morning, or the first day after shipment. The superintendent of stations and transfers for the central region of the railroad testified that similar favorable results have been accomplished in his territory and, in support thereof, introduced an exhibit setting forth numerous typical examples thereof.

It is contended that the acquisition will provide a stable and more dependable and responsible transportation service through the larger financial resources of vendee and the change in the responsibility for the operation of the partnership's facilities. It was testified that the partnership's financial structure was inadequate for the present and future needs of the business and that additional capital was necessary to afford proper service to the public. Vendee's responsibility to the public is shown by insurance coverage as follows: Public liability up to $50,000 for injury to one person and $200,000 for any one accident, property damage up to $5,000, fire and theft cargo insurance limited to $25,000 loss on any one unit and $50,000 for any one disaster, and compensation insurance as required by State laws. It is vendee's intention to extend identical coverage to the new company's operations.

Vendee also represents that economies in operating and other expenses will be effected through the use of joint stations and agencies for procuring and handling traffic, the skilled and experienced personnel of the vendee, increased credit and purchasing power of vendee, and by investment savings in equipment and other facilities. Another important anticipated advantage to the public is the availability to the new company of additional and better operating equipment with which traffic requirements may be met. It is claimed that these additional facilities will correct a condition which in the past has rendered the partnership unable to handle tonnage tendered for transportation and will obviate congestion, delays, and interruptions, in service by making advance provision therefor.

1383 Testimony supported by an exhibit was offered to show that appreciable amounts of tonnage offered to the partnership have been detained at the terminals for more than 24 hours on account of a shortage of equipment.

Counsel for the Motor Truck Association of Ohio, protestant, endeavored by cross-examination and on brief to show that the delay in transportation described was due to a lack of sufficient tonnage to justify movements rather than to a shortage of equipment. No affirmative evidence was offered in support of his position.

Vendee further states that the over-highway service contemplated will be advantageous to the public because it offers a more flexible means of transportation than that provided by the railroad. It was pointed out that the railroad freight stations are closed considerably earlier than the latest hours at which freight can be accepted for shipment by truck. It is further claimed by vendee that the proposed acquisition will not unduly restrain competition. In that connection it was testified that there is no route over which the partnership operates which is not also served by at least three competitors, while some of the routes are served by from 25 to 50. An exhibit was introduced showing the names, addresses, and termini of over 100 competing motor carriers operating in the territory served by the partnership. The vice president of the vendee stated that it is vendee's policy to operate only in the territory parallel and adjacent to the railroad's lines and that in those instances where the partnership's operations extend into territory served by other railroads, vendee would be willing to negotiate with them in respect of the disposition of such operations, and failing in that, would be willing to have the matter settled by the Interstate Commerce Commission or any other qualified body.

At the hearing and on brief, protestant Crawley Transportation Company, represented as operating daily motor-carrier service between Pittsburgh, Pa., and Wheeling, Parkersburg, Clarksburg, and Charleston, W. Va., and over other routes in the latter State, took the position that the acquisition would enable vendee to invade territory already adequately served by protestant and other carriers. It stated that vendee would have an advantage by offering to shippers a combined truck-and-rail service, whereas protestant would be limited to truck service only. Protestant Motor Truck Association of Ohio argued on brief that acquisitions of this type would eliminate in time the element of competition between motortrucks and rail carriers, would increase the dominance of the latter industry over the former, would, in this instance, permit the railroad to reach noncompetitive points served by other railroads, and would eventually create a disturbing competitive condition throughout the country.

1384 Certain questions arise in regard to these proposed transactions. The partnership property is to be acquired by the new company, a corporation. That company in turn is to be controlled by the Pennsylvania Truck Lines, Incorporated, the vendee, through purchase of its

entire capital stock. The vendee is controlled by the Contract Company through direct ownership of 71 percent of its common stock and 100 percent of its preferred stock and indirect ownership through Scott Brothers, Incorporated, of the remaining common stock. The Contract Company is controlled through ownership of 100 percent of its stock by the railroad, which is also its sole creditor.

It is doubtful whether any good reason exists for maintaining in this chain of control the new company, for it would seem that the partnership property could as well be acquired directly by vendee. However, in event of our approval of the proposed transaction, the new company would be a motor carrier subject to our jurisdiction, and the doubt is not of sufficient importance to be pressed.

The Contract Company is not subject to our jurisdiction and is a corporation of the holding-company type with the usual broad powers. It should be said to the credit of the railroad that while this company is not within the jurisdiction of the Commission, the railroad has in this case, through counsel, furnished such information as we sought in respect to it. Apparently the Contract Company owns no property other than securities and cash, and does not now engage in any business other than such investments. They include truck, bus, steamship, and warehouse stocks, and also warehouse bonds.

We are informed that there has been a legal question as to whether or not the railroad, under its charter, has the right to own directly the stock of a motor carrier, and that was for this reason that stock of vendee and other motor-carrier companies was acquired through the Contract Company. We are further informed that as quickly as the legal right of the railroad to hold motor-carrier stock directly is definitely determined, or it is felt safe, in the opinion of counsel, to do so, the Contract Company will either be dissolved or will relinquish its ownership of motor-carrier securities to the railroad. It is indicated that counsel now believe that, under the Motor Carrier Act, 1935, direct ownership of the securities of motor carriers can be justified.

Apparently it was the intent of the State, when the railroad was organized, to confine it to the conduct of a railroad business or activities closely associated therewith. At all events doubts have existed as to its right to enter another field of activity through direct acquisition of the
1385 stocks of motor-carrier companies. It has apparently been the opinion of counsel, however, that no such

doubt existed as to its right to have created and to own a subsidiary company and to acquire motor-carrier securities through that *alter ego*. To any one concerned with realities rather than legal fictions this is, of course, a distinction without a difference, and illustrates the use so frequently made in this country of dummy corporations to accomplish indirectly what cannot be done directly. Such practices bring law into disrepute and we are unwilling to lend them countenance. Apart from this general objection, there is a specific objection in this case. As already indicated, we have no jurisdiction[3] over the Contract Company and no certain rights to obtain knowledge of its affairs. The introduction of such a link in the chain of ownership whereby a railroad controls a motor carrier is plainly undesirable. We are reluctant to approve any acquisition by the vendee of control of a motor carrier, unless and until this link in the chain of railroad ownership has been eliminated.

Section 213 of the Motor Carrier Act, 1935, provides with respect to consolidations, mergers, and acquisitions of control that if the applicant be a carrier other than a motor carrier (e. g. a railroad), or a company controlled by or affiliated with such a carrier other than a motor carrier, we shall not give our approval unless we find "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." In other circumstances it is only necessary, under section 213, to find that the transaction proposed "will be consistent with the public interest." It is the obvious intent of the act that special safeguards shall surround acquisitions of motor carriers by carriers engaged in other forms of transportation, and no doubt railroads were particularly in mind. The proof in such cases must show, not merely that what is proposed is *consistent* with the public interest, but that it will actively *promote* the public interest and in a particular manner, namely, by enabling the acquiring carrier "to use service by motor vehicle to public advantage in its operations." The proof must further show that the acquisition will not "unduly restrain competition."

The partnership claims that on June 1, 1935, it was furnishing daily service over the following routes:

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[3] Limited jurisdiction might, perhaps, be acquired in certain circumstances and after further proceedings under the provisions of section 213 (a) (2), but those circumstances are not here present.

Between—
Columbus, Ohio, and Ann Arbor, Mich.
Columbus, Ohio, and Detroit, Mich.
Columbus, Ohio, and Charleston, W. Va.
1386 Columbus, Ohio, and Montgomery, W. Va.
Columbus, Ohio, and Indianapolis, Ind.
Columbus, Ohio, and Kittanning, Pa.
Columbus, Ohio, and Pittsburgh, Pa.
Lancaster Ohio, and Delmont, Pa.
Lancaster, Ohio, and Grafton, W. Va.
Lancaster, Ohio, and Louisville, Ky.
Chilleothe, Ohio, and Evansville, Ohio.
Charleston, W. Va., and Cincinnati, Ohio.
Charleston, W. Va., and Cleveland, Ohio.
Charleston, W. Va., and Pittsburgh, Pa., via Greensburg, Pa.
Charleston, W. Va., and Pittsburgh, Pa., via Sutton, W. Va.
Charleston, W. Va., and Pittsburgh, Pa., via Wierton, W. Va.
Huntington, W. Va., and Pittsburgh, Pa.
Pittsburgh, Pa., and Cleveland, Ohio, via Rochester, Pa., and Newcastle, Pa.
Pittsburgh, Pa., and Cleveland, Ohio, via East Palestine, Ohio.
Wheeling, W. Va., and Cleveland, Ohio, via East Liverpool and Youngstown, Ohio.
Wheeling, W. Va., and Cleveland, Ohio, via East Liverpool, Lisbon, and Salem, Ohio.
Wheeling, W. Va., and Akron, Ohio.
Cincinnati, Ohio, and Detroit, Mich.
Cincinnati, Ohio, and Parkersburg, W. Va.
Toledo, Ohio, and Lansing, Mich.
Toledo, Ohio, and Battle Creek, Mich.
Pittsburgh, Pa., and Fort Wayne, Ind.

The application for a certificate under the "grandfather" clause covers these 27 regular routes and also various routes over which it is said that irregular service was maintained. When shown on a map, it is evident that the regular routes alone gridiron the State of Ohio and extend into all of the surrounding States. It is also evidence that while some of these routes roughly parallel lines of the railroad, many of them do not, but cover territory which the railroad does not now serve at all. To furnish service on this vast network of routes the partnership has 13 trucks, averaging in cost less than $1,000 each, 10 tractors, and 11 trailers.

Six of these vehicles have been depreciated to a value of $1 each. Obviously this equipment can supply only the most meager service on the routes over which operating rights are claimed. Nor would it suffice to serve the needs of the railroad for the contemplated auxiliary truck service in connection with its rail service. It is clear, therefore, that what the railroad desires chiefly to acquire are operating rights.

In possession of this motor carrier, and assuming that its claims under the "grandfather" clause can be established, the railroad would have a right to expand operations over this great network of routes indefinitely, for section 208 of the Motor Carrier Act, 1935, provides that no terms, conditions, or limitations attached to the certificate
1387 "shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require." Because there are now many independent truckers in the territory in question who have not found the competition of the partnership unduly formidable does not mean that they will not suffer very serious competition, once these operations have the backing of the railroad. It must be borne in mind that this backing means not only great financial strength but also opportunity to use the soliciting force of the railroad and its influence with shippers. In reality, as we see it, this is not a mere purchase of existing operations, but a purchase of operating rights which would hereafter be used, in all probability, if the transaction is approved, in a very different way from that in which they have been used to date.

The proof is convincing that over some of the routes in question the railroad can "use service by motor vehicle to public advantage in its operations." The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will "unduly restrain competition." On the contrary, it should have the opposite effect.

The railroad does not, however, so far as the routes in question are concerned, propose to confine itself to motor-

vehicle service auxiliary to its rail operations. It contemplates also the furnishing of motor-carrier service which would not be associated in this way with rail operations, pointing out that with its financial and other resources it would be able to expand and improve very materially the service which the partnership has been furnishing. As evidence that this would not, "unduly restrain competition," it further points, as we have seen, to the large number of competing motor carriers now operating in the same territory.

While we have no doubt that the railroad could, with the resources at its command, expand and improve the partnership service and that, so far as numbers are concerned, there is now an ample supply of independent operators in the territory for the furnishing of competitive service, we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with,
1388 rather than auxiliary to, their rail operations. The language of section 213, above quoted, is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. Improvement in the particular service now furnished by the partnership might flow from control by the railroad, but the question involved is broader than that and concerns the future of truck service generally. The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public.

Attention may also be called to the fact that the railroad itself appreciates the wide scope of the operations which would be permitted under the rights which the partnership claims under the "grandfather" clause. This is indicated by the statement of vendee's vice president that where the partnership operations extend into territory served by other railroads, vendee would be willing to negotiate with them as to the disposition of such operations or, failing in that, have the matter settled by us or any other qualified body. It will be noted, however, that its apprehensions relate only to complications with other railroads, and its proposal is to leave the operating rights in some form of railroad control.

We are unable to find, therefore, that the employment by the railroad of the properties and rights of the partnership to provide over-highway truck service as proposed herein in competition with rail and motor carriers generally, including the railroad, will "promote the public interest" by enabling the railroad to "use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

We have authority to approve the instant transaction upon such terms and conditions as we may find just and reasonable and with such modifications as we may prescribe. The conditions which we deem just and reasonable involve actions by the railroad and the Contract Company, neither of which is a direct party to these proceedings. The conditions also involve action on the part of the new company to divest itself of authority to conduct operations not auxiliary and supplementary to those of the railroad. Under all the circumstances it seems advisable for us to announce the conditions which must be fulfilled before our approval can be obtained. In this way there will be avoided the delay and expense which would attend dismissing the present application with leave to file new applications thereafter. The conditions which we find to be just and reasonable are the following:

1389 1. That the Pennsylvania Railroad Company take such steps as are legally possible to acquire, subject to our approval, from the American Contract and Trust Company all interest which the latter owns in Pennsylvania Truck Lines, Incorporated.

2. That the service to be rendered by the Barker Motor Freight, Incorporated, in the event the pertinent applications now pending before the Commission are subsequently approved by us, be confined to service auxiliary and supplementary to that performed by the Pennsylvania Railroad Company in its rail operations and in territory parallel and adjacent to its rail lines.

3. That the Barker Motor Freight, Incorporated, shall submit, based on claims made in its pending application under the so-called "grandfather" clause, a statement of the routes and description of the territory over and within which it proposes to establish and operate such auxiliary and supplementary service, and also submit a statement of the arrangements proposed for divestment by it of all alleged operating rights in connection with remaining claims embraced in the said "grandfather" application.

No order will be entered and the proceeding will be held open for 60 days from the service of this report to permit the filing of amended application or applications and statements showing compliance with the conditions outlined above and for such further procedural steps as may be necessary.

By the Commission, division 5.

[SEAL] GEORGE B. McGINTY
Secretary

1 M. C. C.

1390 MF-4

Interstate Commerce Commission

No. MC-F-3[1]

PENNSYLVANIA TRUCK LINES, INCORPORATED, ACQUISITION OF CONTROL OF BARKER MOTOR FREIGHT, INCORPORATED

Submitted November 16, 1936. Decided March 6, 1937.

Order entered approving and authorizing, subject to conditions, (a) purchase by the Barker Motor Freight, Incorporated, of the property and operating rights of D. P. and Floyd Barker, doing business as Barker Motor Freight Lines; (b) acquisition of control by Pennsylvania Truck Lines, Incorporated, of the Barker Motor Freight, Incorporated, by purchase of its stock; and (c) acquisition of control by the Pennsylvania Railroad Company of Pennsylvania Truck Lines, Incorporated, by purchase of its stock. Prior report, 1 M. C. C. 101.

Additional appearances: A. J. County for railway carrier and Joseph L. Scott for motor carrier.

SUPPLEMENTAL REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS EASTMAN, LEE, AND CASKIE

By Division 5:

In our prior report, 1 M. C. C. 101, the proposed purchase by the Barker Motor Freight, Incorporated, of the property and operating rights of D. P. and Floyd Barker, doing business as Barker Motor Freight Lines, and acquisi-

[1] This report also embraces No. MC-F-13, Barker Motor Freight, Incorporated—Purchase of Property and Certificates of D. P. and Floyd Barker, Doing Business as Barker Motor Freight Lines.

tion by Pennsylvania Truck Lines, Incorporated, of control of the Barker Motor Freight, Incorporated, by purchase of capital stock were considered, but an order of approval and authorization was deferred pending acceptance of certain conditions. These were principally occasioned by three facts: (1) Pennsylvania Truck Lines, Incorporated, is a part of a group of companies controlled by the American Contract and Trust Company,[2] a wholly owned subsidiary of the Pennsylvania Railroad Company,[3] (2) the railroad would acquire too extensive operating rights if the transaction were approved, and (3) under the provisions of section 213 (a) (1) of the Motor Carrier Act, 1935, we may, under such terms and conditions as we find just and reasonable, approve a transaction of the present character only if we find "that the transaction
1391 proposed will promote the public interest by enabling * * * [the railroad] to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

In the light of the foregoing facts, as applied to the evidence we concluded:

The proof is convincing that over some of the routes in question the railroad can "use service by motor vehicle to public advantage in its operations." The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. * * *

The railroad does not, however, so far as the routes in question are concerned, propose to confine itself to motor-vehicle service auxiliary to its rail operations. It contemplates also the furnishing of motor-carrier service which would not be associated in this way with rail operations. * * *

* * * there is now an ample supply of independent operators [at least three on each route] in the territory for the furnishing of competitive service, we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads

[2] Herein called the Contract Company.
[3] Herein called the railroad or the Pennsylvania.

free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations.

Accordingly, we found that fulfillment of the following conditions would be necessary before our approval could be given to the proposed transaction:

1. That the Pennsylvania Railroad Company take such steps as are legally possible to acquire, subject to our approval, from the American Contract and Trust Company all interest which the latter owns in Pennsylvania Truck Lines, Incorporated.

2. That the service to be rendered by the Barker Motor Freight, Incorporated, in the event the pertinent applications now pending before the Commission are subsequently approved by us, be confined to service auxiliary and supplementary to that performed by the Pennsylvania Railroad Company in its rail operations and in territory parallel and adjacent to its rail lines.

3. That the Barker Motor Freight, Incorporated, shall submit, based on claims made in its pending application under the so-called "grandfather" clause, a statement of the routes and description of the territory over and within which it proposes to establish and operate such auxiliary and supplementary service, and also submit a statement of the arrangements proposed for divestment by it of all alleged operating rights in connection with remaining claims embraced in the said "grandfather" application.

Responsive to the first condition the railroad has filed appropriate pleadings (a) asking to be made an intervener, which petition is hereby granted, and (b) representing that the Contract Company and Scott Brothers, Incorporated,[1] owners of 71 and 29 percent, respectively, of the capital stock of Pennsylvania Truck Lines, Incor-
1392 porated, are willing to sell, and that the railroad is willing to purchase, such stock. Certified copies of resolutions of the boards of directors of the railroad, Contract Company, and Scott Brothers, Incorporated, authorizing such a transaction, accompanied by opinion of counsel that the transaction is legal, also have been filed. Under these circumstances, and in view of the further fact that control by the railroad of the Contract Company was acquired prior to the effective date of the act, we will herein authorize purchase by the railroad of the capital stock

[1] A majority of the capital stock of Scott Brothers, Incorporated, is owned by the Contract Company.

of Pennsylvania Truck Lines, Incorporated, at a price not to exceed $267,666.64. This amount, according to the supplemental sworn statements, is the price paid by the Contract Company and Scott Brothers, Incorporated, for the stock in question. Not included in the sum is an item of $54,000 which, in the tender of compliance, is described as "indebtedness of the Pennsylvania Truck Lines, Inc." As the character of this indebtedness and how it came into being are not disclosed, we are unprepared, at least at this time, to include the $54,000 as part of the authorized purchase price.

Responsive to our second and third conditions, applicants and the railroad (*a*) submit a list of the operations (see appendix) proposed to be retained, and (*b*) undertake to "cause all the other routes and operations [of D. P. and Floyd Barker] * * * to be sold or discontinued and abandoned."

In connection with the last undertaking it is not clear what method of divestment is intended, i. e., whether by sale or abandonment. We shall assume, however, and treat the "grandfather" application as amended accordingly, that the routes as outlined in the appendix to this report represent the maximum claims now made, or to be made, under the "grandfather" application of D. P. and Floyd Barker. If this assumption be incorrect, applicants should promptly advise us wherein our assumption is inaccurate and how divestment is intended to be accomplished.

The scope of the operations proposed to be retained is broader than intended by the conditions we stated in our prior report. Hence, it will be of advantage to the parties in this and later proceedings if we here amplify the meaning of those conditions. Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself,

1393 those which compete with an established motor carrier,[5] or which invade to a substantial degree a territory already adequately served by another rail carrier.

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[5] "We think that, in order to foster sound economic conditions in the motor-carrier industry, existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territories served by them, as against any person now seeking to enter the field of motor-carrier transportation in circumstances such as are here disclosed." *C. & D. Oil Co. Contract Carrier Application*, 1 M. C. C. 329, decided December 14, 1936.

Approved operations[6] are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called "station-to-station" service.[7] In that connection the shortest distance between two rail terminals, in terms of available travel routes, is sometimes by rail and other times by highway. Alternate highway routes of varying degrees of circuity also usually exist, and, of the latter, that one which most closely parallels the interested rail line ordinarily will be regarded as most appropriate for auxiliary rail service, but this may not always be true. Sometimes the round-about character of a rail line is such that use in rail auxiliary service of a nonparallel short-cut highway is clearly in the public interest, and instances of this character are later mentioned.

On the other hand, the presumption should be against a highway route which exceeds by more than 20 percent the rail distance between points of substituted rail service; and, from the standpoint of an applicant railway an intermediate off-rail point on a permissive route, whatever its direct or indirect character, should not be served if it already is receiving adequate service from a rail or highway common carrier. The evidence shows that over each of the routes here considered, service already is being performed by at least three motor carriers. Hence our order will provide, in connection with the routes here authorized, that service by applicants' motor vehicles may not be accorded to, or traffic interchanged at, any point which is not also a station on the Pennsylvania, but this restriction is without prejudice to subsequent modification as later explained.

In the light of the foregoing we now comment upon some of the claimed routes, the designations being those shown

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[6] In granting the application in *Santa Fe Trails Stages, Inc., Acquisition of Control*, 1 M. C. C. 225, decided November 3, 1936, we said: "Although the bus operation north of Flagstaff here involved cannot be said to be in territory parallel and adjacent to a railroad, such operation for the most part penetrates territory not served by other transportation agencies. The evidence shows there is a public need and demand for the proposed through service, and it is our opinion that we should view this phase of the operation as equivalent to the building by the railroad of a branch or feeder line into a territory not hitherto occupied, and hence an operation auxiliary and supplementary to its rail operations. No protest of any kind has been made against the granting of the application."

[7] For a discussion of different types of motor-freight transportation by rail carriers, see *Coordination of Motor Transportation*, 182 I. C. C. 263, 336, *et seq.*

in the appendix. Route 1.1, between Newark and Delaware, Ohio, about 40 miles, may be described, in terms of a geometric figure, as the hypotenuse of a triangle, with Columbus, Ohio, at the point of the right angle, and lines of the Pennsylvania forming the other two sides. Likewise, that portion of route 1.2 for approximately 75 miles be-
1394 tween Union City and Indianapolis, Ind., also may roughly be described as the hypotenuse of a similarly formed triangle, but with this additional fact situation. Converging toward the right angle are three other lines of the railroad, five of its lines in all being intersected by route 1.2 in the course of the said 75 miles. The railroad concedes that neither route 1.1 nor route 1.2 parallels its own lines, but it argues that the first could be "used as a bypass to avoid traffic congestion at Columbus," and that the second would permit integration of various rail services. Use in rail auxiliary service of short-cut routes which produce such results should be approved.

Route 1.4, over U. S. Highway 27, passes through no intermediate Pennsylvania station for the 60 miles between Richmond, Ind., and Cincinnati, Ohio. Hence, an alternative route not within the scope of vendors' grandfather-clause claims, but which does pass through several intermediate Pennsylvania stations, is prayed for as a substitute. The competitive situation over this substitute route is not of record, however, and this evidentiary silence characterizes the situation respecting all other substitute routes sought herein. This prayer for substitute routes presents an issue not within the scope of the present proceeding and our order herein will not include authorization of any new operations.

Situations involving invasion of the territory of competing rail lines also arise herein. Route 1.3 between Richmond and Washington Court House, Ohio, about 75 miles, roughly parallels the Pennsylvania's line for about two-thirds of the distance, i. e., between Richmond and Xenia, Ohio. Between Xenia and Washington Court House, however, the Pennsylvania, except for a very circuitous line, has no route, but the Baltimore and Ohio Railroad Company does have a direct line serving intermediate stations (some of them points on route 1.3) between Xenia and Washington Court House.

Another illustration is the 60-mile portion of route 5 from Toledo to Dunkirk (near Kenton), Ohio, between those points the highway in question very closely parallels

the rails of the New York Central Railroad Company and passes through no intermediate station on the Pennsylvania's own lines. Indeed, beginning at Toledo, the Pennsylvania's line takes a southeasterly course divergent from that of the highway, the divergence at one point being more than 35 miles. Route 6.6 between Lima and Columbus, Ohio, about 90 miles, is a further illustration of invasion of the territory of competing carriers. The highway there concerned closely parallels the rails of the Erie Railroad Company for about 30 miles and those of the New York Central for the balance of the distance, no intermediate Pennsylvania station being touched en route.

1395 If no restriction were imposed in connection with the three routes last mentioned, the Pennsylvania would be able, through the medium of motor service, to penetrate territory already served by its rail competitors. So far as the present record is concerned this should not be permitted and the blanket restriction in our order, *i. e.*, prohibiting service to points not Pennsylvania stations, meets this contingency, not only with respect to these routes, but also in connection with other situations of similar character here unnecessary to outline.

Another aspect of penetration of competitive rail territory arises in connection with routes 9, 9.3, and 9.4. In their tender of compliance, applicants show the southern terminus of each of those routes as Morgantown, W. Va., which is not a station on the Pennsylvania. Indeed, the nearest point on the Pennsylvania is at least 25 miles away. Under the circumstances we have shortened these routes in such a way that the southern terminus of each is now a station on the Pennsylvania.

Should the restriction prohibiting service to points which are not Pennsylvania stations make it impracticable or uneconomical to operate over any route, steps may be taken to obtain modification of the terms of the authority granted herein. This can be done by the filing of an appropriate application to modify the terms of the certificate under which operations are then being conducted. If proceedings of this character prove unfruitful from the point of view of the railroad, the latter would be free to take lawful steps to abandon or otherwise dispose of the route. Indeed, if applicants deem the imposed conditions too onerous, it would appear they should refrain in the first instance from exercising the permissive authority granted herein.

Nor do our conclusions overlook the interest of the shipping public along the routes here considered. If as a result of proceedings initiated by shippers it is shown, after full hearing, that existing transportation facilities are inadequate or otherwise unsatisfactory at a point in connection with which service is prohibited under the terms of the order herein, such evidence may be a basis for our removing the restriction in the pertinent certificate and ordering the present applicants to render service to that point.

Upon consideration of the record as supplemented by the pleadings filed since and pursuant to our prior report, we find (a) that purchase by the Barker Motor Freight, Incorporated, of the property and operating rights of D. P. and Floyd Barker, doing business as Barker Motor Freight Lines, upon the terms and conditions set forth in the application, which terms and conditions we find to be
1396 just and reasonable, except as hereinafter provided, (b) that acquisition by Pennsylvania Truck Lines, Incorporated, of control of the Barker Motor Freight, Incorporated, by purchase of its entire capital stock upon the terms and conditions set forth in the application, which terms and conditions we find to be just and reasonable, except as hereinafter provided, and (c) that acquisition by the Pennsylvania Railroad Company of control of Pennsylvania Truck Lines, Incorporated, by purchase of its entire capital stock for a sum not in excess of $267,666.64, subject to the terms and conditions hereinafter imposed, which we find to be just and reasonable, will promote the public interest by enabling the Pennsylvania Railroad Company to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition, and that the conditions of section 213 of the Motor Carrier Act, 1935, have been or will be fulfilled: Provided, however, (1) that operations under the authority herein granted shall be confined between the points and over the routes described in the appendix, (2) that the authority herein granted shall not be construed to include the right of rendering service from or to, or the interchanging of traffic at, any point other than a station of the Pennsylvania Railroad Company, (3) that in the event abandonment be not intended, applicants shall advise us, prior to otherwise acting under any of the authority herein granted and not later than 30 days from the date of this report, how divest-

ment is intended to be accomplished of their interest in such claims under the "grandfather" application of D. P. and Floyd Barker as may not be reflected in the routes shown in the appendix, and (4) that, before recording the acquisitions upon their books, applicants shall submit the related journal entries, in duplicate, to our Bureau of Motor Carriers for approval. These findings are not to be understood as restricting the right of the Pennsylvania to use motor facilities in the manner and to the extent contemplated by part I[8] of the Interstate Commerce Act, or as prohibiting service from or to, or the interchange of traffic at, points not on the Pennsylvania's own line, but on a rail route respecting which it has trackage or similar rights, provided the latter include the privilege of serving intermediate stations.

[8] In *Pick-up and Delivery in Official Territory*, 218 I. C. C. 441, motor-vehicle operations of railroad within terminal areas were found to be subject to part I, and not to part II of the Interstate Commerce Act.

An appropriate order will be entered.

1397

APPENDIX

Routes submitted by applicants in purported compliance with conditions prescribed in the prior report

	Highways	Route	Between
1	Pittsburgh, Pa., and Terre Haute, Ind.	U. S. Highway 22.	Pittsburgh to Cadiz, Ohio; U. S. Highway 36 to Newcomerstown, Ohio; Ohio Highway 16 to Columbus, Ohio; U. S. Highway 40 to Terre Haute.
1.1	Newark, Ohio, and Delaware, Ohio	Ohio Highway 16, Newark to Granville, Ohio; Ohio Highway 37, Granville to Delaware.	
1.2	Columbus, Ohio, and Indianapolis, Ind.	U. S. Highway 40, Columbus to West Jefferson, Ohio; Ohio Highway 29 to Urbana, Ohio; U. S. Highway 36 to Greenville, Ohio; Ohio Highway 71 to Ohio-Indiana State line at Union City; Indiana Highway 32 to Muncie, Ind.; Indiana Highway 67 to Indianapolis.	
1.3	Richmond, Ind., and Washington Court House, Ohio.	U. S. Highway 35.	
1.4	Richmond, Ind., and Cincinnati, Ohio	U. S. Highway 27.	
1.5	Springfield, Ohio, and Dayton, Ohio	Ohio Highway 4.	
2	Cincinnati, Ohio, and Pittsburgh, Pa.	U. S. Highway 22.	
2.1	Trinway, Ohio, and Zanesville, Ohio	Ohio Highway 77.	
2.2	Lancaster, Ohio, and Columbus, Ohio	Ohio Highway 158, Lancaster to Baltimore, Ohio; Ohio Highway 256 to Reynoldsburg, Ohio; U. S. Highway 40 to Columbus; also Ohio Highway 31 between Lancaster and Columbus.	

	Highways	Route	Between
2.3	Circleville, Ohio, and Columbus, Ohio	U. S. Highway 23.	
3	Cincinnati, Ohio, and Columbus, Ohio	U. S. Highway 42.	Cincinnati to Lafayette, Ohio; U. S. Highway 40 to Columbus.
4	Cincinnati, Ohio, and Detroit, Mich.	U. S. Highway 25,	Cincinnati to Dayton, Ohio; Ohio Highway 4 to Springfield, Ohio; U. S. Highway 68 to Toledo, Ohio; U. S. Highways 24 and 25 between Toledo and Detroit.
5	Columbus, Ohio, and Detroit, Mich.	U. S. Highway 23,	Columbus to Toledo, Ohio; U. S. Highways 24 and 25 between Toledo and Detroit.
6	Pittsburgh, Pa., and Fort Wayne, Ind.	U. S. Highway 30	from Pittsburgh to Mansfield, Ohio; U. S. Highway 30-N to Beaverdam, Ohio; U. S. Highway 25 to Lima, Ohio; U. S. Highway 30-S to Delphos, Ohio; and U. S. Highway 30 to Fort Wayne; also a short connecting link between Beaverdam and Delphos on U. S. Highway 30-N.
6.1	East Liverpool, Ohio, and Rochester, Pa.	Ohio Highway 68.	
6.2	Youngstown, Ohio, and Powhatan, Ohio.	Ohio Highway 7.	
6.3	East Liverpool, Ohio, and Wheeling, W. Va.	U. S. Highway 30,	East Liverpool to Chester, W. Va.; West Virginia Highway 2 to Wheeling.
6.4	Wooster, Ohio, and Akron, Ohio	Ohio Highway 5.	
6.5	Wooster, Ohio, and Wheeling, W. Va.	U. S. Highway 250.	
6.6	Lima, Ohio, and Columbus, Ohio	U. S. Highway 30-S,	Lima to Kenton, Ohio; Ohio Highway 31 to Columbus.
7	Seymour, Ind., and Louisville, Ky.	U. S. Highway 31,	Seymour to Sellerburg, Ind.; U. S. Highway 31-W to Louisville via New Albany, Ind.; also U. S. Highway 31-E, New Albany to Louisville.
8	Pittsburgh, Pa., and Cleveland, Ohio	Pennsylvania Highway 88,	Pittsburgh to Rochester, Pa.; Pennsylvania Highway 18 to New Castle, Pa.; U. S. Highway 422 to Cleveland.
8-1	Pittsburgh, Pa., and Cleveland, Ohio	Pennsylvania Highway 88 to Rochester Pa.; Pennsylvania Highway 51 to Pennsylvania-Ohio State line near East Palestine, Ohio; Ohio Highway 14 to Salem, Ohio; U. S. Highway 62 to Alliance, Ohio; Ohio Highway 80 to Yale, Ohio; Ohio Highway 14 to Cleveland.	
9	Kittanning, Pa., and Uniontown, Pa.[1]	Pennsylvania Highway 66,	Kittanning to Greensburg, Pa.; U. S. Highway 119 to Uniontown.
9.1	Pittsburgh, Pa., and Kittanning, Pa.	Pennsylvania Highway 28.	
9.2	Pittsburgh, Pa., and Greensburg, Pa.	U. S. Highway 30.	
9.3	Butler, Pa., and West Brownsville, Pa.[1]	Pennsylvania Highway 356,	Butler to Freeport, Pa.; Pennsylvania Highway 28 to Pittsburgh, Pa.; Pennsylvania Highway 837 to junction of Pennsylvania Highway 837 and 88 south of Donora, Pa.; Pennsylvania Highway 88 to West Brownsville, Pa.
9.4	Pittsburgh, Pa., and Waynesburg, Pa.[1]	U. S. Highway 19.	
9.5	West Brownsville, Pa., and Uniontown, Pa.	U. S. Highway 40.	
10	Cleveland, Ohio, and Marietta, Ohio	U. S. Highway 21.	

[1] As submitted by applicants in the tender of compliance, Morgantown, W. Va., is shown as the southern terminus of routes 9, 9.3, 9.4. Each of those routes has been shortened for the reason stated in the text of the said report.

1398 ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 6th day of March, A. D. 1937

No. MC-F-3

Pennsylvania Truck Lines, Incorporated, Acquisition of Control of Barker Motor Freight, Incorporated

No. MC1F-13

The Barker Motor Freight, Incorporated, Purchase of Property and Certificates of D. P. and Floyd Barker, Doing Business as Barker Motor Freight Lines

It appearing, That on October 8, 1936, division 5 entered its report in the above-entitled proceedings directing the parties within 60 days to comply with certain conditions; that on November 16, 1936, the parties filed their tender of compliance with those conditions, including in the tender a petition of The Pennsylvania Railroad Company for leave to intervene;

It further appearing, That, upon consideration of the said tender of compliance, division 5 has, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report, and the report of October 8, 1936, are hereby referred to and made a part hereof:

It is ordered, That The Pennsylvania Railroad Company be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, (a) That purchase by The Barker Motor Freight, Incorporated, of the property and operating rights of D. P. and Floyd Barker, doing business as Barker Motor Freight Lines, including the right to operate pending determination of the "grandfather" application of, and the right to any certificate which hereafter may be issued as a result of such application, upon the terms and conditions set forth in the application in No. MC-F-13, except as hereinafter provided; (b) that acquisition of control by Pennsylvania Truck Lines, Incorporated, of The Barker Motor Freight, Incorported, by purchase of its entire capital stock, upon the terms and conditions set forth in the application in No. MC-F-3, except as hereinafter provided; and (c) that acquisition of control by The Pennsyl-

vania Railroad Company of Pennsylvania Truck
1399 Lines, Incorporated, by purchase of its entire capital stock for a sum not in excess of $267,666.64, be and they are hereby approved and authorized: *Provided, however,* (1) that operations under the authority of this order shall be confined between the points and over the routes described in the appendix of the accompanying report; (2) that the authority here granted shall not be construed to include the right of rendering service from, to, or the interchanging of traffic at, any point other than a station on The Pennsylvania Railroad Company; (3) that in the event abandonment is not intended, applicants shall advise the Commission prior to otherwise acting under the authority of this order, and not later than 30 days from the date hereof, how divestment is intended to be accomplished of their interest in such claims under the "grandfather" application D. P. and Floyd Barker as may not be reflected in the routes shown in the appendix of the accompanying report; and (4) that before recording the acquisitions upon their books Pennsylvania Truck Lines, Incorporated, and The Pennsylvania Railroad Company shall submit the related journal entries, in duplicate, to our Bureau of Motor Carriers for approval.

It is further ordered, That, if the parties to the transactions herein authorized desire to consummate same, they shall notify this Commission of their intention so to do, in writing, at least 10 days prior to the consummation date, in order that such arrangements as are necessary to comply with provisions of the act and rules and regulations of this Commission with respect to filing tariffs, designating agent for service of notices, orders, and process, and all other matters covered thereby may be made.

And it is further ordered, That nothing herein contained shall be construed as a determination of the rights of any person or persons under any section of the Motor Carrier Act, 1935, except section 213 thereof as expressly determined herein.

By the Commission, division 5.

[SEAL]

GEORGE W. LAIRD
Acting Secretary

1400 *T. & P. Motor Transport Company's Exhibit 2*

Interstate Commerce Commission

No. MC-F-1326

SOUTHWESTERN TRANSPORTATION COMPANY—
PURCHASE—THOMAS HILL AND RAY HOWE

Submitted June 4, 1941 Decided July 22, 1941

Purchased by Southwestern Transportation Company of operating rights of Thomas Hill and Ray Howe, doing business as Howe-Hill Truck Lines, approved and authorized, subject to condition.

B. F. BATTS and WILMER A. HILL for applicant.

A. E. O'HARA, H. C. SMILEY, and JAMES W. WRAPE for protestants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, and MILLER

BY DIVISION 4:

Exceptions were filed by applicant to the proposed report, and protestants replied. Our conclusions differ from those of the examiner.

Southwestern Transportation Company of Texarkana, Tex., by application[1] filed August 16, 1940, seeks authority to purchase, for $3,000, the operating rights of Thomas Hill and Ray Howe, partners, of Paragould, Ark., doing business as Howe-Hill Truck Lines. Hearing has been held, at which four motor carriers, Potashnick Truck Service, Inc., Gordons Transports, Inc., Highway Express, Inc., and Kimbel Lines, Inc., opposed the application, and one introduced evidence. Briefs have been filed.

Applicant's corporate history, relationship with the St. Louis Southwestern Railway Company (Berryman Henwood, trustee), herein called the railroad, and operations in interstate or foreign commerce as a motor-vehicle common carrier of general commodities, over regular routes in Texas, Louisiana, Arkansas, Tennessee, and Missouri, are described in *Southwestern Transp. Co.—Purchase—John-*

[1] This application was filed under former section 213, Motor Carrier Act, 1935. The Transportation Act of 1940 incorporated the substance of section 213 in amended section 5 of the Interstate Commerce Act, and the application will be disposed of under the latter section.

son, 35 M. C. C. 437.[2] It has pending under section 5 an application[3] to purchase additional freight operations in Texas.

1401 On January 21, 1941, in No. MC 59374, a certificate was issued to vendors under the "grandfather" clause, covering operations as a motor-vehicle common carrier of general commodities between Jonesboro, Ark., and St. Louis, Mo., over Arkansas Highway 1 to Paragould, Arkansas Highway 25 and Missouri Highway 25 to Kennett, Mo., Missouri Highway 84 to Hayti, Mo., and U. S. Highway 61 to St. Louis, approximately 295 miles, serving Paragould as an intermediate point.

Under option agreement of July 8, 1940, applicant would purchase, for $3,000, vendors' above-described operating rights, free and clear of all encumbrance. Payment of $50 was made upon signing of the agreement, and the remainder of the purchase price would be paid immediately after approval herein.

Applicant's balance sheet as of August 31, 1940, shows assets aggregating $1,922,000, consisting of: Current assets $244,083, including cash $35,670, temporary cash investments $151,667, and material and supplies $32,658; carrier operating property, less depreciation, $401,547; nonoperating property, less depreciation, $50; intangible property $38,383; investment securities and advances to associated companies $953,465; other investment securities and advances $268,212; and deferred debits $16,260, principally prepayments. Liabilities were: Current liabilities $203,371, principally payables to associated companies and accounts and wages payable; other deferred credits $2,314; reserves for injuries, loss, and damage $8,676; capital stock $1,481,100; and earned surplus $226,539. Income statements for 1938, 1939, and the first 8 months of 1940 show net incomes of $61,929, $35,722, and $10,938, respectively.

Vendors' balance sheet as of July 31, 1940, shows assets aggregating $5,980, consisting of: Current assets $360; carrier operating property, less depreciation, $4,378; intangible property $980; and deferred debits $262. The only entry under liabilities is partnership capital $5,980. Ven-

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[2] Since decision in this case, certificates have been issued to applicant in Nos. MC-59488 (Sub-No. 1) and MC-59488 (Sub-No. 2), covering additional operations in Arkansas between Brinkley and Hickory Ridge, and between Jonesboro and Blytheville, over Arkansas Highway 18, serving on the latter route all intermediate points which are stations on railroad.

[3] No. MC-F-1510, Southwestern Transportation Company—Purchase—Luper Transportation Company of Oklahoma.

dors' income statements for 1938, 1939, and the first 7 months of 1940 show net incomes of $2,060, $2,157, and $880, respectively.

Applicant's routes duplicate that of vendors between Jonesboro and Paragould, 23 miles, and between Hayti and the junction of U. S. Highways 61 and 62, 25 miles. From the latter junction to St. Louis over U. S. Highway 61, approximately 195 miles, vendors' route represents an extension of applicant's routes. The railroad's line in the considered territory extends in a northeasterly direction from Jonesboro through Paragould and Malden, Mo., to the Mississippi River at Illmo, Mo., thence across the river into Illinois at Thebes, Ill., and from that point reaches St. Louis, via Gorham and Chester, Ill., over rails of the Missouri Pacific Railroad Company (Guy A. Thompson, trustee), hereinafter called the Missouri Pacific, by virtue of trackage rights, serving no intermediate points in freight service. While vendors' route is generally parallel to the railroad between Jonesboro and Hayti, via Paragould, 76 miles, the remainder of the route is not in territory of the railroad, the two lines being as much as 40 miles apart midway between Thebes and St. Louis. As previously indicated, however, vendors are not authorized to serve any intermediate point except Paragould. Each of the three poionts served by vendors is a station on the railroad, and Jonesboro and Paragould are also served by applicant. The Missouri Pacific serves St. Louis and Paragould, and the St. Louis-San Francisco Railway Company (J. M. Kurn and John G. Lonsdale, trustees) serves St. Louis and Jonesboro. The two rail carriers last named, although given due notice, did not appear at the hearing.

1402

Vendors operate an average of three trips per week between Jonesboro and St. Louis. Ninety-five percent of their north-bound tonnage consists of livestock, the remainder being canned goods, and southbound tonnage consists of general commodities. If the instant transaction is approved, applicant does not propose to handle livestock, but would transport, by overnight truck service, less-than-carload shipments of the railroad originating at northeastern Arkansas and southeastern Missouri points, which are now transported by applicant to Malden, then carried by local freight train to Illmo, at which point they are concentrated and moved in merchandise cars to East St. Louis for either second-morning or third-morning delivery in St. Louis. Direct truck service would result in expediting deliveries from 24 to 48 hours and eliminate the operation of lightly

loaded merchandise cars. In the reverse direction applicant would also provide overnight truck service on south-bound shipments, particularly those received at the railroad's St. Louis depot too late to be forwarded on its train leaving East St. Louis at 7:10 p. m., which reaches the considered southeastern Missouri and northeastern Arkansas points the next morning. In addition to the above operations, applicant proposes to operate its trucks between St. Louis and Memphis, Tenn., and between St. Louis and points served by it south of Jonesboro. Numerous common carriers by motor vehicle, including protestants, at present render overnight service to points in the considered territory with departures at St. Louis later than that proposed by applicant.

A number of shipper witnesses testified in support of the application. Most of such witnesses represented large business concerns located on the line of the railroad which ship, in addition to carload traffic via the railroad, smaller shipments suitable for movement via the additional service to be rendered by applicant. In this connection, by arrangement between applicant and the railroad, covered by tariffs on file with the Commission, if such shipments were
1403 tendered to the railroad they could be moved on the railroad's bill of lading in so-called substituted truck service; conversely, under similar tariffs and arrangements the railroad transports freight for applicant under applicant's bill of lading.[4] Some of these witnesses expressed a preference for this service backed by the financial responsibility of the railroad and applicant. Certain of the shippers, located at larger, main-line points on the railroad, such as Paragould, Jonesboro, and Little Rock, Ark., now receive overnight train service by the railroad. The proposed service, however, would benefit them in those instances where their south-bound freight is tendered to the railroad at St. Louis after 6 p. m.

Protestants contend that the applications should be denied principally because (1) no improvement in the railroad's service between St. Louis, Paragould, and Jonesboro would result from the purchase; (2) substitution of applicant's service for that of the railroad under the facts

[4] Tariffs covering these substituted services are National Substituted Freight Service Directory No. 1, L. E. Kipp's I. C. C. No. A-3099, his MF I. C. C. No. A-48, and Southwestern Motor Freight Bureau, Inc., Substituted Freight Service Directory No. 1-A, Agent J. D. Hughett's I. C. C. No. 2, and his MF-I. C. C. No. 64. See *Substituted Freight Service*, 232 I. C. C. 683.

presented is not a service auxiliary and supplementary to rail service and is a nonapproved operation within the meaning of the doctrine enunciated in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M. C. C. 101 and 5 M. C. C. 9 and 49, hereinafter referred to as the *Barker case;* (3) following the latter case, the railroad should not be permitted to institute motor-carrier operations in territory where its rail line is not owned but is operated under trackage agreements, as is the case with the railroad's operation between Thebes and St. Louis; (4) there should be no distinction made between motor-carrier service that rail carriers or their affiliates are permitted to render as a result of operating rights granted under section 207 and operating rights acquired as a result of proceedings under section 5; and (5) the territory served by vendors is now adequately served by motor and rail carriers. At present protestants do not consider vendors formidable competitors because the commodities handled by the latter are limited, only three points are served, and their operations are not joined with other carriers, such as applicant, to form a continuous competitive service to more distant points. Witness for protestant Potashnick Truck Service, Inc., testified that 98 percent of that carrier's traffic was less-than-truckload, and that, for several months prior to the hearing, curtailment of its service in the territory had been considered because of a decreased flow of traffic and intensive competition from two rail carriers and their subsidiaries (including the railroad and applicant), and at least three other motor carriers.

1404 On its part, applicant argues that because of the modification in language which occurred upon reenactment of the substance of former section 213 as section 5 of the Transportation Act of 1940, "the burden resting upon railroad-affiliated motor carriers in acquisition cases has been lightened." The language of the proviso of former section 213 (a) (1), which was in effect when the *Barker case* was decided, required us to find "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." The corresponding language in present section 5 (2) (b) requires the finding "that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." Con-

sidering the legislative history of the bill (S. 2009) which later became the Transportation Act of 1940, we are of the opinion that the Congress did not intend that the slightly revised language should be given any different meaning than had been accorded the former language.

In the *Barker case*, it was found that a proposed acquisition of control of motor-carrier operations by a railroad should be approved if it were established that the service to be rendered would be auxiliary or supplementary to train service of the railroad. To protect competing carriers, and for other reasons discussed, a condition was there imposed, prohibiting any service under the operations acquired at any point other than a station on the controlling railroad's line. These principles have been somewhat modified and elaborated in numerous subsequent cases, their application being governed largely by the particular facts involved. So far as the condition regarding service only at stations on the railroad is concerned, there is no necessity for such a condition in the instant case inasmuch as all points which vendors are authorized to serve are stations on the railroad. The evidence herein shows that under the proposed plan of operating the properties acquired, the motor-carrier operation would be in substitution for rail service and result in savings to the railroad in operating costs through elimination of lightly loaded merchandise cars, particularly north-bound. On south-bound traffic, the motor carrier operation would supplement present inadequate rail service. We believe this evidence shows that the proposed plan of operations would be auxiliary to and supplementary of the train service.

With respect to protestants' third point the railroad, as previously indicated, serves no intermediate point in freight service over that portion of its line where it operates under trackage agreements. Furthermore, vendors are not authorized to serve any intermediate point
1405 on the railroad's line where it has trackage rights. Compare *Rock Island Motor Transit Co.—Purchase —Swaim*, 25 M. C. C. 350, wherein a motor-carrier subsidiary of the railroad there involved was authorized to purchase operating rights paralleling the line of another railroad over which the former had trackage rights, but served no intermediate points in freight service.

The question presented by protestant's fourth contention, was first discussed by us in a unification case in *Pacific Motor Trucking Co.—Control—Pacific Truck Exp.*, 35 M. C. C. 353, wherein we stated at pages 358 and 359:

In its exceptions, protestant argues that, if existing motor carriers serving the same territory as Pacific are to be protected against competition of a subsidized rail subsidiary, which it contends would be the situation if the instant application is approved, Pacific's operations should be restricted to provide that shipments transported by it be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail. In support thereof, it cites similar restrictions imposed in *Kansas City S. Transport Co., Inc. Com. Car. Application*, 10 M. C. C. 221, and *Great Northern Ry. Co. Extension—Hobson-Lewistown*, 19 M. C. C. 745.

The situations presented in the two cases last cited differ from that here presented. The applications in those cases were filed under section 207 (a) of the act for a certificate of public convenience and necessity authorizing institution of a new operation, wherein the controlling issue is whether the public needs the proposed service. The instant application, on the other hand, was filed under section 213 by a motor-carrier subsidiary of a railroad to acquire control of an existing motor carrier, which at present is in competition with the railroad; and the question presented is whether the authority sought would enable the railroad to use such motor-carrier service to public advantage in its operations and would not unduly restrain competition.

As previously indicated, the record is replete with examples of the many benefits which would inure to the public as a result of the proposed acquisition and, with respect to restraint of competition, shows that in excess of 40 motor-vehicle common carriers of property, engaged in interstate or foreign commerce, operate in the territory served by Pacific, 2 of which, either themselves or through connecting carriers, serve most of the points served by Pacific. The proof requirements of section 213 having been met by applicant, we are of the opinion that the restrictions requested by protestant should not be imposed in the instant proceeding.

Compare also the following from *Norfolk Southern Bus Corp.—Purchase—Virginia-Carolina*, 36 M. C. C. 490, 495:

Protestants do not object to the purchase authority here sought being conditionally granted, but contend that existing motor carriers operating over vendor's routes should be protected against the direct motor-carrier competition of applicant, a railroad subsidiary, and that any authority

granted herein should provide that the proposed service of applicant be restricted to that which is auxiliary or supplementary to the service of the railroad. Specifically, they ask that a condition be imposed requiring that shipments transported by applicant over vendor's routes be limited to those receiving a prior or subsequent rail move-
1406 ment under a through bill of lading. In support of this request they cite *Kansas City S. Transport Co., Inc., Com. Car. Application,* 10 M. C. C. 221, where, in authorizing the institution of new operations by a railroad subsidiary, such restrictions were imposed. Those conditions were modified, however, upon reconsideration of that case by the entire Commission on January 24, 1941, 28 M. C. C. 5. Moreover, we have not imposed such restrictions in unification cases. *Pacific Motor Trucking Co.—Control —Pacific Truck Exp.,* 35 M. C. C. 353, 358-359. Imposition of such restrictions in the instant case is not warranted.

Protestants' last contention is similar to that presented in other unification cases, as indicated by the following excerpts from *Burlington Transp. Co.—Purchase—Corse,* 36 M. C. C. 691.

Protestants, common carriers by motor vehicle affording a competitive service within the considered territory, urge that the application be denied for the principal reasons, (1) that the territory is already adequately served by existing transportation facilities, including the railroad, (2) that they would be placed at an undue disadvantage, if the transaction were approved, by reason of applicant's strong financial backing by the railroad and its use of the latter's solicitation, terminal, and promotional facilities, and (3) that protestants are ready, able, and willing to afford a coordinated rail-truck service with the railroad as here proposed if given the opportunity.

It is true that there is considerable existing motor-carrier competition within the considered territory. However, almost all points authorized to be served by Fischer are stations on the railroad. Motor-carrier competition has been present to a greater or less degree in practically all cases involving proposed railroad control of motor carriers.

Compare also *Darling—Purchase—Baxter,* 36 M. C. C. 521. We are of the opinion that the increased competition which applicant would provide existing carriers in the considered territory would not be likely to interfere substantially with the latters' ability to continue to render transportation service and does not warrant denial of the ap-

plication in view of the obvious advantage which would accrue from the unification.

Questions arose at the hearing whether or not approval of the application would permit applicant to serve East St. Louis. Vendors have been transporting livestock to that point and have tariffs on file covering such transportation. Applicant is of the opinion that inasmuch as East St. Louis is within the commercial zone of St. Louis as defined in *St. Louis Mo.-East St. Louis, Ill., Commercial Zone*, 1 M. C. C. 656, it would be lawfully entitled to serve East St. Louis. Vendors' certificate, however, authorizes service to St. Louis only and not points as described in the case last cited. Our findings are not to be construed as authorizing applicant to render any service beyond the lawful scope of rights acquired. In this connection, applicant has indicated it does not propose to handle livestock under these rights. Nothing herein is to be construed as approval of any limitation by applicant in service which is required to be rendered under such rights.

1407 Applicant has indicated its willingness to amortize or write off any increase in its "Other Intangible Property" account resulting from the instant transaction. Our findings will be conditioned to require immediate write-off of the amount of such increase to surplus.

In arriving at the conclusions herein, consideration has been given to the applicable matters enumerated in section 5 (2) (c).

We find that purchase by Southwestern Transportation Company of the operating rights of Thomas Hill and Ray Howe, partners, doing business as Howe-Hill Truck Lines, upon the terms and the conditions above set forth, which terms and conditions are found to be just and reasonable, is a transaction within the scope of section 5 (2) (a), will be consistent with the public interest, will enable the railroad to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition, and that, if the transaction is consummated, Southwestern Transportation Company will be entitled to a certificate covering rights confirmed in No. MC 59374, which rights are herein authorized to be unified with rights otherwise confirmed in applicant, with duplications eliminated; provided, however, that, if the authority herein granted is exercised, applicant shall immediately write off to surplus the amount of increase in its "Other Intangible Property" account resulting from the instant transaction.

An appropriate order will be entered.

1408 *T. & P. Motor Transport Company's Exhibit 3*

MF—1372

Interstate Commerce Commission

No. MC-F-2073

SOUTHERN PACIFIC COMPANY—CONTROL; PACIFIC MOTOR TRUCKING COMPANY—PURCHASE—VALLEY MOTOR LINES, INC.

Submitted October 27, 1943. Decided December 23, 1943

Purchase by Pacific Motor Trucking Company of certain operating rights of Valley Motor Lines, Inc., and acquisition of control of said operating rights by Southern Pacific Company, through said purchase, approved and authorized, subject to conditions.

William Meinhold and R. E. Wedekind for applicants.
Harold Frasher for vendor.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

Exceptions were filed by applicants to the report proposed by the examiner. Our conclusions differ from those recommended.

Pacific Motor Trucking Company, of San Francisco, Calif., and Valley Motor Lines, Inc., of Fresno, Calif., by joint application filed January 6, 1943, seek authority under section 5, Interstate Commerce Act, for purchase by the former of certain operating rights of the latter for $7,500. Hearing has been held. Subsequent to the hearing, Southern Pacific Company, also of San Francisco, herein called the railroad, which controls vendee through ownership of all its outstanding capital stock, by supplemental application filed October 26, 1943, seeks authority under the same section to acquire conrtol of said operating rights of vendor through the proposed purchase. The capital stock of the railroad is widely distributed.

Vendee's corporate history, operations in interstate or foreign commerce as a motor-vehicle common carrier of property in California, Oregon, Arizona, Nevada, New Mexico, and Texas, and operations of the railroad, are generally described in *Pacific Motor Trucking Co.—Merger,*

38 M. C. C. 687,[1] and cases cited therein. Among such operations of vendee, directly concerned herein, are those in Nevada (*a*) between Fernley and Mina, over U. S. Highway 95 via Hazen, Fallon, Schurz, and Hawthorne, serving the intermediate point of Hawthorne and intermediate and off-route points within 5 miles of said highway which are stations on the railroad, subject to the restrictions shown below, covered by certificate issued June 26, 1942, pursuant to report and order in a proceeding under section 207 in No. MC-78786 (Sub-No. 84); and (*b*) between Reno and Winnemucca,[2] over U. S. Highway 40 via Sparks, Wadsworth, and Fernley, thence in a northeasterly direction through Lovelock, serving on-rail intermediate points except those between Reno and Fernley and on-rail off-route points within 10 miles of such route, subject to restrictions shown below, confirmed under the "grandfather" clause in *Pacific Motor Trucking Co. Extension—Reedsport, Oreg.*, 41 M. C. C. 469, and covered by certificate issued January 26, 1943, embracing No. MC-78786 (Sub-No. 4). The segments of these routes between Reno and Fernley, and between Fernley and Fallon closely parallel the lines of the railroad. Between Fallon and Hawthorne, the highway diverges somewhat from the railroad. However, all intermediate points thereon north of and including Hawthorne are either stations on the railroad or within 7 miles of such a station. Rights described above under (*a*) and (*b*) are subject to the restrictions (1) that service to be performed shall be limited to that which is auxiliary to, or supplementary of, rail service; (2) that all contractural arrangements between vendee and any railroad or railway express carrier to whose service its service is auxiliary or supplemental, shall be reported to the Commission and shall be subject to revision if and as the Commission finds it necessary in order that such arrangements shall be fair and equitable to the parties; and (3) such further conditions as the Commission, in the future, may find it necessary to impose in order to restrict vendee's operations to service which is auxiliary to, or supplementary of, rail service. Rights described above under (*b*) are also subject to the further

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[1] The merger transaction authorized therein was consummated February 1, 1943.

[2] These operations were purchased by vendee pursuant to authority granted in *Pacific M. Trucking Co.—Purchase—Humboldt Frt. Lines*, 5 M. C. C. 413.

restriction[3] that shipments shall be limited to those which, in addition to the movement by vendee, receive an immediately prior or immediately subsequent movement by rail.

1410 The prior or subsequent rail-haul restriction applies only to the segment of the considered route between Reno and Fernley. The restriction applicable to the remainder of the route (Fernley-Hawthorne) is that the service shall be limited to that which is auxiliary to, or supplementary of, rail service. The record is vague as to what interpretation vendee has placed on "auxiliary to, and supplementary of, rail service" in applying the latter restriction to its operations, but vendee states in its exceptions that it has not construed it as preventing it from transporting freight which has not had and will not have a rail movement.

Vendor's corporate history, affiliations, and operations as a motor-vehicle common carrier of general commodities, over regular routes, serving Susanville, Calif., on the north, Hawthorne, on the east, Visalia, Tulare, and Coalinga, Calif., on the south, and San Francisco, on the west, are more particularly described in *Valley Motor Lines, Inc.—Purchase—Pioneer Exp. Co.*, 38 M. C. C. 65, and cases cited therein. The operations directly involved herein are conducted under a certificate in No. MC-936, issued, April 22, 1942, which authorizes transportation of general commodities, with exceptions, between Reno and Hawthorne, over

[3] In *Pacific Motor Trucking Co. Extension—Reedsport, Oreg., supra*, page 478, Division 5, in imposing the additional restriction on the rights between Reno and Winnemucca via Fernley, stated:

The operation in question connects at Winnemucca with operations authorized in No. MC-78786 (Sub-Nos. 12 and 38), extending from Winnemucca through Elko to Wells, Nev., but does not connect at Reno or elsewhere with any of applicant's California operations. The operation between Winnemucca and Elko is unrestricted while that between Elko and Wells is subject to a prior or subsequent rail-haul restriction. At the time of the hearings herein, the Elko-Wells operation was not yet begun. Reno and Carlin, Nev., are the points at which interchange of less-than-carload freight is made with the parent company. Carlin is located east of Winnemucca on that segment of the Winnemucca-Elko operation which is unrestricted. In the circumstances, a key-point restriction in connection with the Reno-Winnemucca operation appears impractical. At the same time, the extent of the connecting operations which extend virtually across the State of Nevada and the comparatively short gap between such operations and those in California authorized in No. MC-78786 (Sub-No. 19) suggest the desirability of some restriction. In the circumstances, a prior or subsequent rail-haul restriction will be imposed.

U. S. Highways 40 and 95 via Sparks, Wadsworth, Fernley, Fallon, and Schurz, 135 miles, serving all intermediate points.

Under agreement of December 4, 1942, vendee would purchase, free of encumbrance, vendor's above-described interstate operating rights and corresponding intrastate rights covered by order of the Nevada commission in No. CPC-A-216 of November 20, 1939, for $7,500, payable within 30 days from date of approval herein and by the Nevada commission, whichever is last. Paragraph 3 of the agreement provides that vendor shall continue its existing operations between Reno and points in California for a period of not less than 2 years from date of consummation; that during such period and such further period up to 5 years that vendor operates between Reno and California points, it shall interchange with vendee at Reno all traffic handled by it destined to Hawthorne and points intermediate to Reno and Hawthorne; and that it shall preferentially solicit for vendee traffic originating at all such points which it may transport from Reno to points in California, except as to traffic which may be specifically routed by shippers via some other carrier. The purpose of those provisions was explained by vendee as being for protection of its estimate that freight which it would receive at Reno from vendor as a result of this unification would amount to $15,000 annually.[4] In its exceptions, vendee states it is willing to waive the provision covering the exclusive right to receive at Reno all traffic handled by vendor destined to points on the considered route. We are of the opinion that all provisions of paragraph 3 should be canceled as they are monopolistic in nature and would be largely unworkable in view of our condition which will require that all traffic handled by vendee between Reno and Fernley over the considered route shall have a prior or subsequent movement by rail.

1411

Vendee's balance sheet as of December 31, 1942, shows assets aggregating $1,915,343, consisting of: Current assets $705,393, principally cash $60,056, and receivables from associated companies $366,902; carrier operating property,

[4] As shown by a test check for the period January 4 to 16, 1943, vendor transported to Hawthorne from San Francisco, Oakland, and Sacramento, Calif., 28,360, 6,200, and 7,955 pounds, respectively, and as much or more to Fallon. On the basis of July 1942 traffic, it is estimated that vendor's annual tonnage over the considered route is about 3,548 for interstate and 2,694 for intrastate traffic

less depreciation, $816,835; intangible property $108,841; investment securities and advances, associated companies $265,756; and deferred debits $18,518. Liabilities were: Current liabilities $279,101, principally accounts payable $119,957 and wages payable $95,368; advances payable, associated companies $1,558,931; equipment obligations $112,414; other long-term obligations $24,000; deferred credits $9,261; capital stock $7,700; and earned surplus (debit balance) $76,064. Its income statements for 1940, 1941, and 1942 show deficits of $22,997 and $2,989 and net income, before provision for income taxes, of $13,728, respectively. In view of the debit balance in vendee's surplus account, our findings will be conditioned to require that vendee shall amortize over a 5-year period, the amount of increase in its "Other Intangible Property" account resulting from the instant transaction.

Vendor's balance sheet as of October 31, 1942, shows assets aggregating $540,968, consisting of: current assets $116,801, principally receivables from associated companies $19,065, and material and supplies $95,548; carrier operating property, less depreciation, $349,760; nonoperating property, less depreciation, $12,751; intangible property, less amortization, $45,863; investment securities and advances, associated companies $12,215; and deferred debits, prepayments $3,578. Liabilities were: Current liabilities $101,973, principally notes payable $30,168 and accounts payable $54,664; equipment obligations $34,631; other long-term obligations $67,792; reserves $3,878; capital stock, common $153,130; premium and assessments on capital stock $35,381; and surplus, unearned $18,966 and earned $125,217. Its income statements for 1940, 1941, and the first 10 months of 1942 show net incomes of $24,813, $34,295, and $31,894, before, and $18,913, $22,474, and $29,374, after provision for income taxes, respectively. Separate figures showing results of operations over the route involved herein were not furnished, but vendor's president testified that its operation had not produced a profit since the war began.

1412 The considered route of vendor is entirely duplicated by routes over which vendee is already authorized to operate. As previously indicated, however, vendee is restricted from serving intermediate points between Reno and Fernley, 35 miles, and may operate between Reno and Fernley in handling only traffic having an immediately prior or immediately subsequent movement by rail. In

addition, vendor has intrastate rights, which vendee does not have, over that portion of the route between Fernley and Hawthorne, 100 miles. All points on the route are stations on the railroad except Hawthorne, which is 7 miles from Thorne, a station on the railroad. Vendor operates one round-trip schedule each week day between Reno and Hawthorne and an additional such schedule between Reno and Fallon, 63 miles. Vendee operates a scheduled service between Reno and Fallon and between Thorne and Hawthorne. Because of restrictions imposed by the Office of Defense Transportation, it provides only occasional service between Fallon and Hawthorne and points on its route south of the latter point. The railroad provides triweekly local freight service between Reno and points on the route. In addition to service by vendee and vendor, almost all points on the routes are provided with other general-commodity, regular-route motor-carrier service. Oregon-Nevada-California Fast Freight, Inc., operates between points in California and Elko, Nev., serving all intermediate points between Reno and Fernley; Nevada Central Motor Lines, Inc., operates between Reno and McGill, Nev., serving all intermediate points between Reno and Fallon; and John S. Ginocchia, doing business as Nevada California Transportation Company, operates between points in California and Tonopah, Nev., serving Reno and Hawthorne only. Two-line motor-carrier service is available between Reno, Schurz, and Hawthorne through interchange at Yerington. In addition, two other motor carriers operate over irregular routes in the general territory involved, transporting principally ore, ore concentrates, mining machinery, and materials supplies, and equipment used in the construction and development of mines. In view of the remaining motor-carrier service, elimination of vendor through this purchase would not result in undue restraint of competition.

If the instant transaction should be approved without restriction limiting the service to and from Reno to the transportation of freight having a prior or subsequent rail haul, vendee intends to continue its present coordinated rail-truck service with the railroad and, in addition, perform an all-truck single-line service, including interchange of freight with connecting motor carriers at Reno. Such service would consist of 1 round-trip schedule, except Sundays and holidays, between Reno and Mina, 168 miles, and an additional such schedule between Reno and Sparks, 4 miles.

1413 Under the proposed unified operation, savings of as much as 111,384 truck-miles per annum would be realized. Based on estimated revenue to be received from transporting both intrastate and interstate shipments without restrictions, and an annual increase in its operating expenses of $6,761 by reason of operating additional equipment, vendee expects to realize net income from the operation of approximately $15,887 per year. It is estimated that the railroad would be able to save 516 car days per annum through more extensive substitution of truck for rail transportation. With the prior or subsequent rail-haul restriction imposed, the value of the considered operating rights to vendee would be reduced approximately 50 percent through the limitation on its right to interchange freight with vendor and other motor carriers.

Vendor wishes to sell the considered rights for the reasons that it has not been successful in obtaining a terminal and sleeping quarters for its drivers at Hawthorne, which has become an extremely congested area since the war. Under present conditions, the drivers must sleep in the cabs of trucks and deliver freight directly from line-haul equipment. Vendor's agent at Reno is handling collections and claims, but with difficulty. Vendor also lacks sufficient equipment and that used on the considered route, consisting of four trucks and two trailers, would be released for use elsewhere. Its employees used on this portion of its operations would be transferred to other operations. An appreciable portion of its traffic in this territory is directly connected with the war effort. Vendee's fixed charges would not be increased as a result of the transaction.

One question presented for our determination here is what restrictions, if any, should be imposed on the unified operating rights of vendee if this purchase is to be approved. Under the proviso of section 5 (2) (b), in cases where a railroad or a railroad subsidiary or affiliate proposes to acquire control of motor-carrier operations, we are only authorized to approve the transaction if we are able to find, among other things, that it will enable the railroad involved "to use service by motor vehicle to public advantage in its operations and that it will not unduly restrain competition." In *Pennsylvania Truck Lines, Inc—Control—Barker M. Frt.*, 5 M. C. C. 9, herein called the *Barker case*, it was found that such a transaction could be approved under that proviso when the evidence established that the motor-carrier operations proposed to be acquired could and

would be used in service "auxiliary or supplementary to train service" of the affiliated railroad. That principle has since been followed in appraising the evidence adduced to support the statutory finding in rail-motor acquisition cases. However, the meaning of the phrase "auxiliary and supplementary to train service," as sometimes formerly used in acquisition cases has never been defined as to pre-
1414 cisely what limitation of the operating authority was intended by those words. Evidence showing how such service could and would be rendered in various ways, if the transaction were approved, has been accepted and found sufficient to support the required statutory finding. Usually, such evidence has related to motor-carrier operations in combination and in coordination with the railroad's operations, resulting in expedited service, and savings for the railroad, but no condition has heretofore been imposed in acquisition cases limiting the transportation authorized *solely* to transportation in combination with the railroad of the railroad's freight, or *preventing* the motor-carrier operations and service being made directly available to the shipping public apart from and in addition to the railroad's service. The only definite restriction on the operating authority which was imposed in the *Barker case* and later cases has been designed to confine the motor-carrier operations acquired to the territory of the railroad through limiting the rights so as to authorize service only at stations on the railroad. Although, at times, a condition formerly was sometimes included in acquisition cases to the effect that service to be rendered should be "auxiliary and supplementary" to the railroad's service, there has been no indication in the reports that such condition was intended to prohibit rendition of all motor-carrier service directly for the shipping public under the operating rights in *addition to*, in *substitution for*, and in *lieu of*, the parent railroad's service, or to restrict the operation *solely* to one in combination with the railroad's operation; nor is it our understanding that it has been so construed by the carriers. In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon a motor-carrier operation in *addition to*, in *substitution for*, and in *lieu of*, the railroad's operation, as well as upon an operation *in combination* with the railroad. *Southwestern Transp. Co.—Purchase—Hill and Howe*, 37 M. C. C. 83, in which petition

for reconsideration was denied by the Commission March 2, 1942.

In *Pacific M. Trucking Co—Purchase—Humboldt Frt. Lines, supra,* wherein vendee was authorized under former section 213 to purchase claimed "grandfather" rights over the considered route between Reno and Fernley, division 5 prescribed a condition that the authority granted would be subject to "such limitations or restrictions as the Commission may hereafter find it necessary to impose, in order to insure that the service shall be auxiliary or supplementary to the train service" of the railroad. Later, in the proceeding involving determination of the rights to which vendee should be lawfully entitled under the "grandfather" clause of section 206 of the act as successor in in-
1415 terest to Humboldt Freight Lines, division 5 confirmed and claimed rights acquired between Reno and Fernley, subject to five restrictions, including one requiring that "shipments transported by applicant shall be limited to those which, in addition to the movement by applicant, receive an immediately prior or an immediately subsequent movement by rail." *Pacific Motor Trucking Co. Extension—Reedsport, Oreg., supra.*

The above-mentioned prior or subsequent rail-haul restriction was obviously imposed by division 5 in the "grandfather" case in order that vendee should not be permitted to engage in an all-truck service directly for the shipping public in operating between those points. This restriction, in connection with vendee's entire route between Reno and Hawthorne via Fernley, is applicable to all transportation between Reno and all points on the route served by vendee, via Fernley. On the other hand, it would not apply to transportation by vendee only between Fernley and Hawthorne and intermediate points. Although vendee stated at the hearing that it would not consummate the instant transaction if the present prior or subsequent rail-haul condition were preserved in effect against the unified operations, in exceptions to the proposed report it is stated that it is willing to accept such condition as we may consider necessary.

Points on the considered route in sequence beginning at Reno, and their population based on 1940 census are: Reno, 21,317; Sparks, 5,318; Vista, not stated; Ditho, not stated; Wadsworth, 200; Fernley, 418; Hazen, 100; Mahala, not stated; Saulan, not stated; Fallon, 1,911; Schurz, 75; and Hawthorne, 750. In our opinion, vendee should not be

permitted to engage in all-motor carrier service over the considered route in addition to the railroad's service. Freight which it should be permitted to transport over the route between Reno and Fernley, and between Reno and other points on the route via Fernley should be limited to that which has an immediately prior or immediately subsequent rail haul. The present rail-haul restriction on vendee's rights will accordingly be preserved as a condition to approval herein and extended to embrace the rights which it will acquire from vendor over the same route.

We find that purchase by Pacific Motor Trucking Company of certain previously described operating rights of Valley Motor Lines, Inc., and acquisition of control of said operating rights by Southern Pacific Company, upon the modified terms and conditions above set forth, which modified terms and conditions are found to be just and reasonable, constitute a transaction within the scope of section 5 (2) (a), will be consistent with the public interest, will enable the Southern Pacific Company to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition and that, if the
1416 transaction is consummated, Pacific Motor Trucking Company shall be entitled to a certificate covering such portion of the operating rights granted in No. MC-936, which rights are herein authorized to be unified with rights otherwise confirmed in Pacific Motor Trucking Company, with duplications eliminated; provided, however, that if the authority herein granted is exercised, paragraph 3 of the agreement of December 4, 1942, shall be canceled; and provided, further, that the restrictions applicable to vendee's present operating authority between Reno and Hawthorne shall remain in effect and be applicable to its unified operating authority between the same points, including intermediate points, resulting from consummation of the transaction herein authorized; and provided, further, that Pacific Motor Trucking Company shall amortize in equal monthly amounts over a maximum period of 5 years, commencing with the date of consummation herein, the amount properly assignable to its "Other Intangible Property" account as a result of the instant transaction, in a manner consistent with the provisions of the uniform system of accounts for class I motor carriers, or in lieu of amortization in any month of the 5-year period, it may write off to surplus the unamortized balance of the amount recorded in its "Other Intangible Property" account, so as to re-

move from such account within said 5-year period, through either amortization or write-off, the entire amount thereof.

An appropriate order will be entered.

MAHAFFIE, *Commissioner*, dissenting in part:

I concur in the findings of the majority except that I would not impose the prior or subsequent rail-haul restriction.

1417 *T. & P. Motor Transport Company's Exhibit 4*
MF-1484

No. MC-F-445[1]

THE ROCK ISLAND MOTOR TRANSIT COMPANY—PURCHASE—WHITE LINE MOTOR FREIGHT COMPANY INCORPORATED, ET AL.
Decided March 4, 1946

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1438 PORTER and MAHAFFIE, *Commissioners*, dissenting:

We concur in Commissioner Miller's separate expression, except the suggestion that authority, in the future, be limited to traffic which moves at rail rates and on rail billing. We do not agree with this because when there is a difference between motor-carrier rates and rail rates, this limitation would tend to aggravate differences between those motor carriers which are subsidiaries of railroads and those which are not. In our opinion, limiting the service to rail points or points within a reasonable distance of those served by railroad, would be sufficient.

MILLER, *Commissioner*, dissenting:

Eight years ago we approved and authorized the purchase by Transit of operating rights of White Line, then claimed under the "grandfather" clause. In doing so, we found that Transit proposed to render, under the acquired rights, an all-truck service between points also served by the trains of its parent railroad as well as a truck service coordinated with that train service. There is nothing in that report limiting the operating rights to be acquired to prevent such service being rendered. That transaction was consummated and a certificate was eventually issued to Transit covering the rights, also without restriction as to the kind of service authorized. For 8 years Transit has rendered motor-carrier service under those rights, without question that it was rendering the lawfully authorized service. Without affording Transit an opportunity for hearing on the question, the majority now deprive Transit of

its rights to continue to render the kind of service which it has been rendering by imposing restrictions like those imposed in *Kansas City S. Transport Co. Inc., Com. Car. Application*, 10 M. C. C. 221, 28 M. C. C. 5, a proceeding arising under section 207 of the act, including a condition limiting the service authorized to that which is auxiliary to, or supplemental of, train service of the parent railroad. The majority report leaves no doubt that this restriction is intended to deprive Transit of the right to engage in operations unconnected with the rail service, of the right to be a party to tariffs containing all-motor or joint rates, and of the right to transport freight at other than the rail rates of its parent. See *Texas & Pacific M. Transport Co. Com. Car. Application*, 41 M. C. C. 721, decided January 21, 1943. The majority take similar action in respect of operating rights purchased by Transit from the Fredericksons pursuant to our approval, which was also granted without any condition being imposed limiting the kind of service authorized under the rights upon exercise of the purchase authority. The action of the majority, in my opinion, is arbitrary, is wholly unsupported by any-
1439 thing in these records, is without knowledge of the remaining available service, and is unfair to the carrier which invested its funds in these properties pursuant to our prior approval of its unrestricted operations under the rights acquired.

The justification given by the majority for the action taken is not convincing. The long quotations from the *Barker* case embrace a general discussion of the manner in which a motor-carrier subsidiary of a railroad may coordinate its operations with the train service. However, the only conditions imposed in that proceeding affecting service under the rights authorized to be acquired were the two which canceled so much of those rights as authorized operations in territory outside the natural territory of the parent railroad. Those conditions had nothing to do with the *kind of service* to be rendered. That transaction was consummated, a certificate was issued to the vendee as successor under the "grandfather" clause, without any restriction whatsoever as to the kind of service authorized under the rights, and vendee presumably has conducted an unrestricted all-motor service as authorized by that certificate. Even in the discussion in those quotations from the *Barker* case, there is nothing to indicate that the view of auxiliary and supplementary service then held was of a service limited to the transportation of rail freight at rail rates.

The phrase was not so specifically interpreted until 6 years in the *Texas & Pacific* case. In not a single rail-motor acquisition case decided after the *Barker* case was any condition precedent to approval imposed which modified the acquired rights to prevent the rendition of all-motor service by the railroad subsidiary until the report of the Commission, division 4, in *Southern Pac. Transport Co.—Pur.—Trinity M. Frt. Lines*, 40 M. C. C. 215, decided June 13, 1945, where, under the facts there existing, a condition precedent was imposed, modifying the rights to limit the service authorized solely to that which was auxiliary to, or supplemental of, train service within the meaning of the *Texas & Pacific* case. Indeed, on two occasions after the decision in the *Kansas City Southern* case, on petitions for reconsideration by protestants in rail-motor acquisition cases, based on the contention that the rights acquired should be restricted in a manner similar to the restrictions in the *Kansas City Southern* case, the Commission denied the petition, thus affirming the action of division 4 in refusing to restrict the rights in that way. *Frisco Transp. Co.—Purchase—Reddish;* 35 M. C. C. 132, and *Southwestern Transp. Co.—Purchase—Hill and Howe*, 37 M. C. C. 83.

The majority correctly point out that, from the date of the decision in the *Barker* case, the principles there recognized and applied controlled the disposition of every rail-motor acquisition case. The point is, however, that neither in the *Barker* case nor those which followed it was any condition to approval imposed which canceled any of the acquired operating rights so far as the *kind of* 1440 *service* authorized was concerned. Contrary to the view of the majority that the report in *Frisco Transp. Co.—Purchase—Reddish, supra* marked a departure from former policy, evidenced by the *Barker* case, that report is wholly in line with the report in the *Barker* case. In both cases the only conditions imposed with respect to the rights were geographical. The majority state:

Despite whatever color of support may be found for the thought that the "approval" operations of the vendee in the *Barker* case, were limited only territorially and not as respects the character of the service which might be rendered, we are convinced there was no such intent and that the reports should not be so construed or applied.

The carriers and the public generally should not be forced to read into our reports intentions which are not clearly stated therein, or to anticipate that, years after we have given our approval without stating what we mean, we

then, on our own motion, and without a hearing, cancel certain of the rights previously authorized to be acquired —on the ground that such was our intention when we first granted the authority. This applies equally to those cases wherein a condition was imposed reserving the power to impose future conditions as well as those where no such power was reserved. That condition, when used, referred vaguely to imposition of future restrictions to limit the service to that which was "auxiliary to, or supplemental of," train service. At the time that condition was imposed the carriers had no reason to anticipate, from anything stated in the reports, that such power might, at some distant future date, take the form of depriving it of the right to haul all traffic except that of the parent railroad, should they exercise the authority granted. Particularly is this true when, even after the decision in the *Kansas City Southern* case, the Commission continued to refrain in every case from imposing conditions in acquisition cases limiting the kind of service in any way under the acquired rights. "Auxiliary and supplemental" had never been stated, in any acquisition case, to mean a service limited to that of transporting freight of and for the parent railroad, until the single recent case above cited.

We have permitted these carriers to invest their funds in acquiring definite operating rights, unrestricted as to the kind of service authorized. The "transactions," approved under section 213 or section 5, have been consummated and there is here no longer any question of the transaction being "consistent with the public interest" or that they would "enable such carrier to use service by motor vehicle to public advantage in its operations." Those issues were fully determined in the prior reports when the applications were granted. Those findings were made on the basis of rendition of all motor service as well as a coordinated service. The majority now cancel cer-
1441 tain of the rights permitted to be acquired under those findings. No attempt is made, in taking this action, to meet the requirements of section 212 (a).

It is my view that, for the future, motor-carrier subsidiaries of railroads should not be permitted, in section 5 proceedings, to acquire and to engage in unrestricted all motor operations unconnected with the train service of their parent railroad. It is entirely proper, and, I believe, necessary in the public interest, that when we permit railroads to acquire control of motor-carrier operations under section 5, appropriate conditions precedent to the exercise

of the authority should ordinarily be imposed modifying the operating rights and the kind of service authorized under the rights in such a way as to prevent the motor-carrier subsidiary from engaging in all-truck service competitive with independent motor carriers. It seems to me that the imposition of a condition precedent which would require the motor-carrier subsidiary to engage only in the transportation of freight from or to stations on the line of the parent railroad, at rail rates and on rail billing, generally would suffice for this purpose. No such condition was imposed in these proceedings and we should not now, long after exercise of the authority previously granted, arbitrarily cancel certain of the operating rights permitted to be acquired, on the theory that we intended to do it at the time we approved the transactions.

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1444 *T. & P. Motor Transport Company's, Exhibit 5*

This report will not be printed in full in the permanent series of Motor Carrier Reports of the Commission.

INTERSTATE COMMERCE COMMISSION

No. MC-19201 (Sub-No. 34)[1]

PENNSYLVANIA TRUCK LINES, INC., EXTENSION—LEBANON, OHIO

Submitted July 30, 1946. Decided January 6, 1948.

1. Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, between certain points in Indiana, Ohio, and Pennsylvania, over specified routes, serving certain points which are stations on the rail lines of The Pennsylvania Railroad Company. Issuance of a certificate, subject to conditions, approved upon compliance by applicant with certain requirements, and applications in all other respects denied.

[1] This report also embraces the following Sub-numbers under No. MC-19201: (Sub-No. 35), Pennsylvania Truck Lines, Inc., Extension-Monroeville; (Sub-No. 36), P. T. L. Extension-Richmond; (Sub-No. 37), P. T. L. Extension-Toledo; (Sub-No. 39), P. T. L. Extension-Canton; (Sub-No. 42), P. T. L. Extension-Youngstown; (Sub-No. 43) P. T. L. Extension-Leetonia; (Sub-No. 46), P. T. L. Extension—Ohio Points; and (Sub-No. 25), P. T. L. Extension Indiana-Ohio-Pennsylvania.

2. On further hearing in No. MC-19201 (Sub-No. 25) found that Greenville, Ohio, should be eliminated as a key point in connection with the services applicant is authorized to perform under its certificate issued July 26, 1944, prior report, 42 M. C. C. 759.

Harry H. Frank, Sterling G. McNees, and *David M. Wallace* for applicant in all proceedings except No. MC-19201 (Sub-No. 46), and *Gilbert Nurick* for applicant in the latter proceeding.

H. Z. Maxwell and A. M. Donnan for a supporting intervener in all proceedings except No. MC-19201 (Sub-No. 46).

Herbert Baker, Ferdinand Born, Taylor C. Burneson, W. P. Downey, W. E. Hanley, Jack B. Josselson, Fred I. King, E. E. Kundtz, and *Elber, J. Shover* for opposing interveners in all proceedings except Nos. MC-19201 (Sub-No. 25) and MC-19201 (Sub-No. 46).

Herbert Baker, Taylor C. Burneson, W. E. Hanley, Jack B. Josselson, Fred I. King, and *Elber J. Shover* entered "special appearances" in No. MC-19201 (Sub-No. 25).

Herbert Baker and *Elber J. Shover* for opposing interveners in No. MC-19201 (Sub-No. 46).

1445 REPORT OF THE COMMISSION[2]

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND PATTERSON

BY DIVISION 5:

This report involves nine applications of Pennsylvania Truck Lines, Inc., of Pittsburgh, Pa., a wholly-owned subsidiary of The Pennsylvania Railroad Company, herein called applicant and the Railroad, respectively. Seven applications[3] were initially heard on a consolidated record and were included in a single recommended report, with appropriate orders, by three joint boards. Another application, No. MC-19201 (Sub-No. 25), which had been reopened in respect of a key-point condition, was further heard on the same record as the seven applications, and was covered by the same report and an appropriate order by a fourth joint board. The remaining application, No. MC-19201 (Sub-No. 46), was heard on a separate record and a separate report and order were recommended therein by a joint board. The Railroad intervened in support of all of the considered applications, except Sub-No. 46. Numerous motor carriers oppose all nine applications and will be

[2] On further hearing in No. MC-19201 (Sub-No. 25).

[3] No. MC-19201 (Sub-Nos. 34, 35, 36, 37, 39, 42, and 43).

referred to as protestants. The Ohio Association of Commercial Haulers, Common Carrier Conference of Indiana, Inc., and American Trucking Associations, Inc., intervened in all proceedings, except Sub-No. 46.

Exceptions were filed by applicant and protestants to the recommended orders of the joint boards in certain applications and each side replied to the exceptions of the other. Our conclusions differ generally from those recommended.

In the seven applications listed in footnote 3 and in Sub-No. 46, applicant seeks certificates of public convenience and necessity authorizing operation as a common carrier by motor vehicle of general commodities, except household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, in interstate or foreign commerce, between specified points on the lines of the Railroad in Indiana, Ohio, and Pennsylvania, over regular routes, as set forth in appendix A hereto, in substituted truck-for-rail service in the transportation of less-carload freight moving under railroad bills of lading and railroad tariffs. In Sub-No. 25, applicant requests that the certificate issued July 26, 1944, authorizing similar service between certain points, be modified by eliminating Greenville, Ohio, as a key point. See *Pennsylvania Truck Lines, Inc., Ext.—Ind., Ohio, and Pa.*, 42 M. C. C. 759.

Status of Applicant—Protestants raised certain questions concerning the status of applicant which will first be considered. At the beginning of the consolidated hearing, protestants moved that the applications be dismissed on the ground that the proposed operations would not
1446 be those of applicant but instead would be those of the Railroad, which has not sought authority therefor. In support of this motion, they assert that the proposed operations would be similar in all essential respects to those considered by the Supreme Court in *Thomson v. United States*, 321 U. S. 19. The joint board took the motion under advisement at the hearing and overruled it in its recommended report, citing the more recent decision of the same court in *Interstate Commerce Commission v. Parker*, 326 U.S. 60. In that case, the Court sustained the grant to another wholly-owned subsidiary of the Railroad, The Willett Company of Indiana, Inc.,[4] of a certificate

[4] The name of this carrier was changed to Penntruck Company, Inc., as authorized by the Commission, effective March 10, 1947, but, for convenience, it will be referred to herein as Willett.

authorizing the performance of substituted truck-for-rail service as described in *Willett Co. of Ind., Ext.—Fort Wayne—Mackinaw City*, 42 M. C. C. 721.

Protestants contend that when a common-carrier railroad undertakes to transport property over the public highways in or by motor vehicles owned and operated by a nominee whether the latter be its wholly-owned subsidiary, independent contractor, employee or other agent under private contract, the railroad becomes a "common carrier by motor vehicle" as defined in the Interstate Commerce Act. They point out that here the Railroad proposes to employ applicant as its "trucker" or owner-operator of the motor vehicles to be used in performing the substituted service and that this relationship is covered by a private contract, which may be terminated by either party immediately or upon 30 days' notice, in certain eventualities. They urge that the Commission may not grant a certificate to a "trucker" privately employed by the Railroad to perform this type of motor-vehicle service as such action would arbitrarily set up the provisions of the private contract between the parties as the guiding standards of authorization and regulation of this highway transportation and thus, enable the parties to prescribe and control the transportation and, as a result, permit the private contract to supersede the act itself. Protestants believe that the Railroad, and not its wholly-owned and privately-employed subsidiary, is the common carrier by motor vehicle and proper party applicant in these proceedings.

Applicant's status must be determined in the light of the written provisions of the contract and the actual facts respecting its performance of the substituted truck-for-rail service. In performing this service, applicant would serve the Railroad exclusively and would serve only those points which are stations on its rail lines. The traffic would consist of less-carload shipments of general commodities which would at the time be moving under railroad bills of lading and railroad tariffs and at railroad rates. The Railroad would solicit all traffic and would assume responsibility for the safe and prompt transportation of all shipments, including the settlement of claims with the shippers. Applicant would not have any direct
1447 dealings with the shippers or any responsibility to them as shippers. It would furnish, maintain and operate the motor vehicles used in the substituted service, employ the drivers, and exercise exclusive control and supervision over the operation of the motor vehicles.

The contract covering this substituted service is similar to other contracts which the Railroad customarily uses for this type of service. At the beginning of the contract applicant is referred to as a trucker "who is engaged in the trucking business as an original private and independent contractor", and at the end, there is a provision that applicant throughout the entire period of its agreements with the Railroad "has been and shall continue to be a wholly independent contractor." Under the contract applicant agrees to accept less-carload freight, as well as mail and express, from the Railroad at designated stations, to transport such property and deliver it at designated stations of the Railroad, such service to include the loading and unloading of applicant's vehicles and "incidental collection from and delivery to" the premises of the Railroad's patrons. Applicant also agrees to secure and deliver proper receipts and shipping documents, to collect and deliver to the Railroad all charges and amounts due with respect to freight which it transports, and to comply with all governing laws and applicable tariffs. Applicant assumes responsibility and agrees to save harmless and indemnify the Railroad in respect of loss, damage, or delay to freight, injury or death to persons, damage to property, violation of any rule or regulation of public authority, and various acts of omission or commission by applicant or its agents, servants or employees. Applicant agrees to provide for insurance or bonds, at its own expense and to the satisfaction of the Railroad, in order to assure the fulfillment of these obligations. Applicant also assumes exclusive responsibility for any and all requirements of a social security nature imposed at present or in the future with respect to it or its employees. It agrees not to assign, transfer or sub-let the contract or the work required thereunder without the written consent of the Railroad. The Railroad agrees to pay applicant certain compensation for the transportation and handling of freight and all other services and also to reimburse applicant for the hire of extra equipment. The Railroad is to be given access to applicant's records for the purpose of verifying any claims of compensation. Applicant's compensation would be computed on the basis of a monthly standby charge and mileage fees, regardless of the volume of traffic transported or the revenue derived therefrom, but the Railroad would endeavor to pay sufficient compensation to insure applicant a reasonable profit.

Applicant's status has been considered in previous proceedings wherein it has been found to be a common carrier

by motor vehicle and has been granted certificates of public convenience and necessity authorizing certain motor-vehicle operations, including substituted truck-for-rail service. In performing this type of service under its present certificates applicant operates under essentially the same arrangements as are proposed herein. Compare *Pennsylvania Truck Lines, Inc., Com. Car. Application,* 41 M. C. C. 607, 610. These arrangements are substantially the same as those of Willett which was found to have the status
1448 of a common carrier by motor vehicle; a finding which was not disturbed by the Supreme Court on review. See *Willett Co. of Ind. Inc., Ext.—Fort Wayne—Mackinaw City, supra,* and *Interstate Commerce Commission v. Parker, supra.* Since Willett's status as a common carrier by motor vehicle has withstood review before the Court, it follows that applicant must have the same status by reason of the similarity of its arrangements to those of Willett. We conclude, therefore, that applicant is a common carrier by motor vehicle under the act. In view of this conclusion, it follows that protestants' motion to dismiss the applications on the ground that the proposed operations would not be those of applicant was properly overruled.

Protestants' contention that the contract between applicant and the Railroad would, in effect, supersede the act is without merit. Contracts between the parties in substituted service proceedings are generally brought within the scrutiny of the Commission by means of an appropriate condition in the certificate. Hence, if the contract herein should contain any provision incompatible with applicant's status as a common carrier by motor vehicle, it could be eliminated upon review of the Commission.

Qualifications of Applicant—Certain evidence bearing on applicant's qualifications to perform the proposed service will next be considered. Applicant's balance sheet as of November 30, 1944, shows assets aggregating $1,226,748, consisting of: Current assets $539,760; tangible property, less depreciation, $390,230; intangible property $44,054; investment securities and advances $156,646; and deferred debits $96,058. It also shows liabilities as follows: Current liabilities $475,830; advances payable to associated companies $228,927; deferred credits $12,921; capital stock $495,640; and earned surplus $13,430. Applicant lost $88,000 in the first 11 months of 1944 and an undisclosed amount in 1943, but operated at a profit prior to 1943. The losses are attributed to shortages of equipment and manpower and other conditions which prevailed during the war.

Also bearing on applicant's fitness is the fact that during 1944 applicant was convicted of violating certain tariff provisions and other requirements of the act by the United States District Court at Columbus, Ohio. We have long adhered to the rule that evidence of violations of the act may properly be considered in determining an applicant's fitness but that such violations do not constitute an absolute bar to the grant of authority under the act. Here, applicant is a well established motor carrier with a long record of service in its territory and, while its past violations are not to be condoned, we do not believe that it is unfit to perform the proposed service. Neither do we have any doubt as to its ability, financial or otherwise, to perform such service. We conclude that applicant is fully qualified under the act to perform substituted service for the Railroad.

Present Authority—As a background for our detailed study of the proposed routes, *we shall describe briefly the present authority held by applicant* and certain other subsidiaries of the Railroad. All the proposed routes are located in the territory west of Pittsburgh and east of Richmond and Fort Wayne, Ind. Generally they parallel the lines of the Railroad.

1449 Applicant, as successor to Barker Motor Freight, Incorporated,[5] has been authorized to transport general commodities, except household goods as defined in *Practices of Motor Common Carriers of Household Goods, supra*, over a system of regular routes extending generally from Wheeling, W. Va., and Pittsburgh, on the east, to Cincinnati, Lima, and Toledo, Ohio, and Detroit, Mich., on the west, including branches to Cleveland, Ohio, on the north, and Marietta, Ohio, on the south. *Under this certificate issued in No. MC-19201 (Sub-No. 4), herein called the Barker certificate, applicant is limited to a service to and from, and, the interchange of traffic at, points on the authorized routes which are stations of the Railroad.*

Under the Barker certificate applicant performs two distinct types of service; (1) substituted service for the railroad, and (2) independent motor carrier service for the general public. The latter service involves the transportation of general commodities, in any quantity, under motor carrier bills of lading and tariffs and at motor carrier rates, and is the same as the service performed by protes-

[5] Purchase of these rights by applicant was approved in *Pennsylvania Truck Lines, Inc. Control—Barker M. Frt.*, 5 M. C. C. 9 and 49, and the rights were determined in *Pennsylvania Truck Lines, Inc., Com. Car. Application*, 33 M. C. C. 21.

tants. Substituted service was being performed by applicant at the time of the hearing in January 1945, over several routes most of which radiate out of Pittsburgh and Columbus. Independent service also was being performed at that time only over regular routes extending principally between the following points: (1) Cincinnati, Toledo, and Detroit, (2) Cincinnati, Columbus, and Cleveland, (3) Cleveland and Pittsburgh, and (4) Pittsburgh, Canton, and Lima, Ohio. Embargoes were then in effect on this independent type of service at many authorized points in Ohio and western Pennsylvania although at some of these embargoed points, substituted service was being performed for the Railroad as no embargoes were in effect on the latter type of service. Applicant has its own agents and representatives who deal with the shippers in the performance of the independent service. In January 1945, 200 units of equipment were being used in independent service and 500 in substituted service. Applicant's revenues from the substituted service have increased steadily from 44 percent in 1942 to 55 percent in 1943, and to 60 percent in the first 9 months of 1944. The remaining portions of its revenues in these periods were derived from its independent service.

Subsequent to the hearings in these proceedings, applicant filed a petition, dated February 6, 1947, in No. MC-19201 (Sub-No. 4), seeking reopening of that proceeding for the sole purpose of attaching an additional condition to the sole purpose of attaching an additional condition to the certificate issued therein. On October 29, 1947, the Commission, division 5, entered an order which by its terms provided that the foregoing certificate should be amended by the addition of the following conditions:

1450. 1. The service to be performed by said carrier (applicant) shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company,

2. Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's (applicant's) operation to service which is auxiliary to, or supplemental of, rail service.

In view of the status of these Barker rights at the time of the hearings herein, and the fact that they still are not subject to key-point or similar restrictions, they will be referred to in this report as unrestricted.

* * *

1453 *T. & P. Motor Transport Company's, Exhibit 6*

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 21st day of July, A. D., 1936.

The matter of regulations governing the adoption of tariffs, schedules, and supplements filed pursuant to Sections 217 and 218 of the Motor Carrier Act, 1935, being under consideration.

AND IT APPEARING, That good cause has been shown for the publication of such rules and regulations:

IT IS ORDERED, That when the name of a carrier is changed, or when its operating control is transferred to another carrier, or to a receiver, trustee, executor, administrator, or assignee, either in whole or in part, the carrier, receiver, trustee, executor, administrator, or assignee who (or which) will thereafter operate the properties shall, except as provided by Rule 4 (d) of the Special Circular hereinafter referred to, publish, file and post adoption notices and supplements in the form and manner prescribed in Special Circular M No. 1, which is hereby approved and made effective, August 10, 1936.

By the Commission, Division 5:

(SEAL) GEORGE B. McGINTY
Secretary

1455 SPECIAL CIRCULAR M No. 1

RULE 1

CHANGE OF NAME, OR TRANSFER OF ENTIRE OPERATION

(a) (1) When the name of a *common* carrier is changed, or when its operating control is transferred to another *common* carrier, the carrier which will thereafter operate the properties shall file with the Interstate Commerce Commission and post at the stations and offices affected, an adoption notice numbered in its MF-ICC, MP-ICC, or ME-ICC series, reading as follows:

"The....(Name and doing business as, if any, of adopting carrier) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, concurrences, traffic agreements, divisions, au-

thorities, powers of attorney or other instruments whatsoever, including supplements or amendments thereto, filed with the Interstate Commerce Commission by, or heretofore adopted by the....(name and doing business as, if any, of old carrier) prior to.... (date)."

(a) (2) In addition to the above adoption notice the new carrier shall immediately file with the Interstate Commerce Commission and post at the stations and offices affected, a consecutively numbered supplement to each of the effective tariffs issued or adopted by its predecessor, reading as follows:

"Effective....(here insert date shown in the adoption notice) this tariff, or as amended, became the tariff of the ....(name and doing business as, if any, of the new carrier) as per its adoption notice MF-ICC (or MP-ICC or ME-ICC) No....."

(a) (3) Tariffs issued by other carriers or agents for and in behalf of the carrier absorbed, taken over, operated by another carrier, or whose name is changed, shall be amended on statutory notice, by the next regular supplement filed, to eliminate the name of the old carrier and to add the name of the new carrier. Such supplement shall also contain the following provision:

"The....(name and doing business as, if any, of the adopting carrier) by its adoption notice MF-ICC (or MP-ICC or ME-ICC) No....., having taken over the tariffs, etc., of the .... (name and doing business as, if any, of the old carrier) the....(name and doing business as, if any, of the adopting carrier) is hereby substituted for the....(name and doing business as, if any, of the old carrier) wherever it appears in this tariff."

(b) (1) When the name of a *contract* carrier is changed or when its operating control is transferred to another *contract* carrier, the carrier which will thereafter operate the properties shall file with the Interstate Commerce Commission and post at the stations and offices affected an adoption notice numbered in its MF-ICC, MP-ICC, or ME-ICC series, reading as follows:

"The....(name and doing business as, if any, of the adopting carrier) hereby adopts, ratifies and makes its own, in every respect as if the same had been originally filed and posted by it, all schedules, contracts, concurrences or other instruments whatsoever including

1456 supplements or amendments thereto, filed with the Interstate Commerce Commission by, or heretofore adopted by the.... (name and doing business as, if any, of the old carrier) prior to .... (date)."

(b) (2) In addition to the above adoption notice, the new carrier shall immediately file with the Interstate Commerce Commission and post at the stations and offices affected a consecutively numbered supplement to each of the effective schedules issued or adopted by its predecessor reading as follows:

"Effective.... (here insert date shown in the adoption notice) this schedule, or as amended, became the schedule of.... (name and doing business as, if any, of the new carrier) as per its adoption notice MF-ICC (or MP-ICC or ME-ICC) No. ....."

(b) (3) Schedules issued by agents for and in behalf of the carrier absorbed, taken over, operated by another carrier, or whose name is changed, shall be amended on statutory notice by the next regular supplement filed to eliminate the name of the old carrier and to add the name of the new carrier. Such supplement shall also contain the following provision:

"The.... (name and doing business as, if any, of the adopting carrier) by its adoption notice MF-ICC (or MP-ICC or ME-ICC) No. ...., having taken over the schedules, etc., of the (name and doing business as, if any, of the old carrier) the.... (name and doing business as, if any, of the adopting carrier) is hereby substituted for the.... (name and doing business as, if any, of the old carrier) wherever it appears in this tariff."

(c) Succeeding supplements or amendments to such tariffs or schedules filed by the adopting carrier shall be numbered consecutively following the number of the adoption supplement or amendment.

New tariffs or schedules reissuing or succeeding such tariffs or schedules shall be numbered in the MF-ICC, MP-ICC or ME-ICC series of the adopting carrier. The adopting carrier when canceling any tariff or schedule issued or adopted by the old carrier, must identify it in the cancelation notice by reference to its MF-ICC, MP-ICC or ME-ICC number, by reference to the name of its issuing carrier, and, when tariffs or schedules have been published by the old carrier in more than one series, by reference to the particular series in which that tariff or schedule was published.

Rule 2

Transfer of a Part of an Operation

(a) When the operating control of a *common* carrier's properties is transferred in part to another *common* carrier, the carrier which will thereafter operate that part of the properties shall file with the Interstate Commerce Commission and post at the stations and offices affected an adoption notice numbered in its MF-ICC, MP-ICC or ME-ICC series reading as follows:

"The....(name and doing business as, if any, of adopting carrier) hereby adopts, ratifies, and makes its own in every respect as if the same had been orig-
1457 inally filed and posted by it, all tariffs, classifications, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, including supplements or amendments thereto, filed with the Interstate Commerce Commission by, or heretofore adopted by, the ....(name and doing business as, if any, of the old carrier) prior to....(date) insofar as said instruments apply (here describe the operations transferred)."

(b) (1) In addition to the above adoption notice, the old carrier shall immediately file with the Interstate Commerce Commission and post at the stations and offices affected *under proper concurrence from the new carrier,* a supplement to each of its effective tariffs covered by the adoption notice reading as follows:

"Effective .... (here insert date shown in the adoption notice) this tariff or as amended, insofar as it contains rates, rules, and regulations applying (here describe the operations transferred), because the tariff of the .... (name and doing business as, if any, of the new carrier) as per its adoption notice MF-ICC (or MP-ICC or ME-ICC) No. .... of .... (name and doing business as, if any, of the new carrier)."

(b) (2) Tariffs issued by other carriers or agents applicable in connection with that part of the line taken over or operated in part by another carrier, shall be amended on statutory notice by the next regular supplement filed to incorporate necessary changes. Such supplement shall also contain the following provision:

"The .... (name and doing business as, if any, of the new carrier) by its adoption notice MF-ICC (or MP-ICC or ME-ICC) No. ...., having taken over tariffs,

etc., of the .... (name and doing business as, if any, of the old carrier) insofar as they contain rates, charges, rules and regulations applying .... (here describe the operations transferred), the .... (name and doing business as, if any, of the new carrier) is hereby substituted for the .... (name and doing business as, if any, of the old carrier) wherever the latter appears in this tariff in connection with said points, routes, or territory."

(c) Rates, rules and regulations applying locally between points on the transferred portion shall be transferred as quickly as possible to tariffs of the new carrier. The old carrier shall cancel such rates, rules and regulations from its tariffs on statutory notice and shall refer by MF-ICC, MP-ICC or ME-ICC number to the tariffs of the new carrier for rates to apply thereafter. The new carrier shall publish and file corresponding rates, rules and regulations on statutory notice to become effective upon the date upon which the cancelation of the old carrier's rates, rules and regulations becomes effective.

(d) If on the transferred portion there is a point which will continue to be served by the old line as well as being established as a point on the new line, a note or reference mark may be shown in connection with the name of that point and explained substantially as follows:

1458 "This adoption notice does not have the effect of eliminating .... as a point served by .... (name and doing business as, if any, of the old carrier) but has the effect of establishing service at said point by .... (name and doing business as, if any, of the new carrier)."

(e) When the operating control of a *contract* carrier's properties is transferred in part to another *contract* carrier, the old carrier shall issue a supplement to each of its effective schedules upon statutory notice reading as follows:

"Effective .... (date) the minimum rates, charges, rules, and regulations in this schedule are withdrawn and canceled insofar as they apply .... (here describe the operations transferred). For minimum rates, charges, rules, and regulations to apply in the future, see schedule MF-ICC (or MP-ICC or ME-ICC) No. ...., issued by .... (name and doing business as, if any, of new carrier)."

The new carrier shall issue and file at the same time, to become effective on the same date, a schedule or schedules establishing on statutory notice minimum rates, charges, rules and regulations in lieu of those withdrawn by the old carrier.

Rule 3

Assumption of Operating Control by Receivers, Trustees, Executors, Administrators or Assignees

Adoption notices similar to those prescribed in Rules 1 and 2, but numbered consecutively in the MF-ICC, MP-ICC, or ME-ICC series of the old carrier, must immediately be filed by a receiver, trustee, executor, administrator, or assignee when he assumes possession and operating control of a carrier's lines, either in whole or in part, and must show the names of the receivers, trustees, executors, administrators, or assignees on the title page in connection with the carrier's name. When such possession and operating control are terminated, the carrier taking over the properties shall file an adoption notice, and if a change in the name of the carrier has been made, shall also file supplements as prescribed in Rules 1 and 2.

Rule 4

General Instructions Applicable to All Changes Made Under the Authority of this Circular

(a) Notices of adoption shall be filed with the Commission immediately and if possible on or before the date shown therein. Copies shall be sent to each agent or carrier to which power of attorney or concurrence has been given by the old carrier. The effective date must be the date (as shown in the body of the notice) on which the change in name or operation occurs, except that, if prior approval by the Interstate Commerce Commission of such change is required, the effective date shown shall not antedate that approval.

1459 (b) Concurrences and powers of attorney adopted by a carrier, receiver, trustee, executor, administrator, or assignee shall, within 120 days, be replaced and superseded by new concurrences and powers of attorney issued by, and numbered in the series of the new carrier, receiver, trustee, executor, administrator or assignee, except that receivers, trustees, executors, administrators, or

assignees may number concurrences and powers of attorney in the old series. The cancelation reference to the former concurrence or power of attorney must include the name or initials of the former issuing carrier. Concurrences and powers of attorney which will not be replaced by new issues shall be regularly revoked on the notice and in the manner prescribed by Rule 10 (d) of Tariff Circular MF No. 1 or Rule 15 (b) of Tariff Circular MP No. 2.

(c) Adoption notices and special supplements issued under the authority of this circular shall contain no other matter.

(d) The provisions of this circular do not apply to changes in name or operating control of—

(1) a rail carrier;

(2) a water carrier operating under the provisions of Section 5 (21) of Part 1;

(3) a motor carrier, to the extent that it participates in the publication and maintenance of joint rates with carriers named in (1) and (2) above;

nor to changes in name or operating control not authorized by Part II.

1460 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington D. C., on the 29th day of September, A. D. 1938

The matter of regulations governing the adoption of tariffs, schedules, and supplements filed pursuant to Sections 217 and 218 of the Motor Carrier Act, 1935, when authority for the temporary operation of motor carrier properties has been granted pursuant to the provisions of Section 210a (b) of said Act, being under consideration.

IT APPEARING, That good cause has been shown for the publication of such rules and regulations:

IT IS ORDERED, That when authority for the temporary operation of motor carrier properties has been granted pursuant to the provisions of Section 210a (b) of the said Act, motor carriers shall publish, file and post adoption notices and supplements in accordance with the regulations heretofore adopted and promulgated in Special Circular M No. 1, as modified and supplemented by Amendment No. 1 to said Special Circular M No. 1.

AND IT IS FURTHER ORDERED, That the said Amendment No. 1 to Special Circular M No. 1 be, and it is hereby, approved and made effective September 29, 1938.

By the Commission, division 5.

(Seal) W. P. BARTEL
Secretary

1461

AMENDMENT No. 1
TO
SPECIAL CIRCULAR M No. 1

Special Circular M No. 1 is hereby amended to include the following addition:

RULE 5 (ADDITION)

TEMPORARY OPERATION OF MOTOR CARRIER PROPERTIES UNDER AUTHORITY OF SECTION 210a (b)

(a) When temporary authority to take over the operating control of all or a portion of the operations of a carrier is granted pursuant to the provisions of Section 210a (b) of the Motor Carrier Act, 1935, as amended, the new carrier that assumes temporary control of the operations of the old carrier shall, except as provided in paragraph (b) of this rule, comply with the provisions of Rules 1, 2 and 4 of this circular.

(b) The new carrier is not required to reissue the adopted concurrences and powers of attorney during the period of temporary control of the operations of the old carrier. New concurrences and powers of attorney granting authority to publish rates or fares from or to points included in the temporarily controlled operations, shall be in the series of the old carrier; for example

MFXA 2 No. 6 (ROE'S TRUCKING SERIES)
JOHN DOE TRANSPORT, INC.
Operator of
RICHARD ROE
d/b/a
ROE'S TRUCKING
(Post Office address)

(c) The new carrier, when it publishes in a tariff or schedule issued in its name, rates, fares, charges, or other provisions relating thereto, from, to, or between points included in the temporarily controlled operations, shall file such publication in the name of the new carrier as oper-

ator of the old carrier under consecutive I. C. C. numbers (MF, MP, or ME) and in the series of the old carrier. For example, if John Doe Transport, Inc., assumes temporary control of the operations of Richard Roe, dba Roe's Trucking, the title page of tariffs, schedules, or supplements thereto, must show the I. C. C. number and name of the carrier in substantially the following manner:

MF I. C. C. No. 17 (ROE'S TRUCKING SERIES)
JOHN DOE TRANSPORT, INC.
Operator of
RICHARD ROE
d/b/a
ROE'S TRUCKING

(d) When permanent authority to take over the temporarily controlled operations is granted pursuant to the provisions of Section 213 of the Motor Carrier Act, 1935, the new carrier shall file an adoption notice and otherwise comply with the provisions of Rules 1, 2 and 4 of this circular.

(e) If the temporary authority to assume operating control of the old carrier is not made permanent, the old carrier must file an adoption notice and otherwise comply with Rules 1, 2 and 4 of this circular. The effective date to be shown in the adoption notice and adoption supplements is the date on which the temporary authority for the new carrier to operate the properties of the old carrier expires or is vacated.

1462

Order

At a session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of April, A. D., 1940.

The matter of regulations governing the adoption of tariffs supplements and other documents filed pursuant to Section 217 of the Motor Carrier Act, 1935, and as amended, being under consideration and good cause appearing therefor:

IT IS ORDERED, That the regulations contained in Special Circular M No. 1, and as amended, be, and they are hereby, canceled, effective April 1, 1941, insofar as said regulations apply to the adoption of publications filed by common carriers by motor vehicle and common carriers by water, other than railroad owned or controlled water carriers, pur-

suant to Section 217 of the Motor Carrier Act, 1935, and as amended, and shall be superseded by the regulations contained in Tariff Circular MF No. 3.

It Is Further Ordered, That Amendment No. 2 to Special Circular M No. 1 providing for the cancellation of said regulations, be, and it is hereby approved and made effective April 1, 1941.

By the Commission, Division 5.

W. P. Bartel
Secretary

(Seal)

1463 Amendment No. 2

Special Circular M No. 1

Cancellation Notice

Effective April 1, 1941 the regulations contained in Special Circular M No. 1, and as amended, Rules 1, 2, 3, 4 and 5 thereof, insofar as said regulations govern the publication, filing and posting of adoption notices and supplements by common carriers by motor vehicle and common carriers by water, other than railroad owned or controlled water carriers, are canceled.

On and after April 1, 1941, regulations contained in Tariff Circular MF No. 3 will govern.

1464 *T. & P. Motor Transport Company's Exhibit 7.*

No supplement to this tariff will be issued except for the purpose of cancelling the tariff, unless otherwise specifically authorized by the Commission.

MF-I. C. C. No. 2

Received
Interstate
Commerce Commission
128343 Jun 25 1938
Bureau of Motor Carriers
Section of Traffic

The Texas and Pacific Motor Transport Company
Adoption Notice

The Texas and Pacific Motor Transport Company hereby adopts, ratifies, and makes its own in every respect as if

the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, including supplements or amendments thereto, filed with the Interstate Commerce Commission by or heretofore adopted by, W. A. Johnson, doing business as Johnson Motor Lines prior to June 11, 1937 insofar as said instruments apply from, to or between all points on a route extending from and including (*) Abilene, Texas, thence via US Highway 80 to and including Big Spring, Texas.

ISSUED JUNE 23, 1938 EFFECTIVE JUNE 11, 1937

Issued under authority of Special Circular M No. 1 and in conformity with Interstate Commerce Commission Docket No. MC-F-107.

Issued by
T. E. Huffman
General Freight Agent
1025 Elm Street
Dallas, Texas

1465 No supplement to this tariff will be issued except for the purpose of cancelling the tariff, unless otherwise specifically authorized by the Commission. MF-I. C. C. No. 3

RECEIVED
INTERSTATE
COMMERCE COMMISSION
128343 Jun 25 1938
BUREAU OF MOTOR CARRIERS
SECTION OF TRAFFIC

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
ADOPTION NOTICE

The Texas and Pacific Motor Transport Company hereby adopts, ratifies, and makes its own in every respect as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or

(*) This adoption notice does not have the effect of eliminating Abilene, Texas as a point served by W. A. Johnson, doing business as Johnson Motor Lines, but has the effect of establishing service at said point by The Texas and Pacific Motor Transport Company.

other instruments whatsoever, including supplements or amendments thereto, filed with the Interstate Commerce Commission by, or heretofore adopted by, the Fort Worth Warehouse and Storage Company, Inc., prior to June 11, 1937 insofar as said instruments apply between Dallas, Texas, and Abilene, Texas, via Fort Worth, Weatherford, and Metcalfe Gap, thence over two routes to Abilene, one via Breckenridge and Albany, and the other via Strawn, Ranger, Eastland, and Cisco; also a branch route connecting the two routes between Metcalfe Gap and Abilene at Breckenridge, on the north, and Ranger, Eastland, and Cisco, on the south; except Fort Worth Warehouse and Storage Company, Inc., retains its Fort Worth local cartage rights, and a household goods irregular-route operation between Fort Worth and all other Texas points.

ISSUED JUNE 23, 1938 EFFECTIVE JUNE 11, 1937

Issued under authority of Special Circular M No. 1 and in conformity with Interstate Commerce Commission Docket No. MC-F-108.

Issued by
T. E. Huffman
General Freight Agent
1025 Elm Street
Dallas, Texas

1466 No supplement to this tariff will be issued except for the purpose of cancelling the tariff, unless otherwise specifically authorized by the Commission.

MF-I. C. C. No. 5
Cancels
MF-I. C. C. No. 4

RECEIVED
INTERSTATE
COMMERCE COMMISSION
136527 Sep 6 1938
BUREAU OF MOTOR CARRIERS
SECTION OF TRAFFIC

ADOPTION NOTICE

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

The Texas and Pacific Motor Transport Company hereby adopts, ratifies, and makes its own in every respect as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, including supplements or

amendments thereto, filed with the Interstate Commerce Commission by, or heretofore adopted by Southern Transportation Company prior to September 5, 1938 insofar as said instruments apply from, to or between the following points:

Dallas, Texas	Hallsville, Texas
Terrell, Texas	Marshall, Texas
Elmo, Texas	Scottsville, Texas
*Wills Point, Texas	Jonesville, Texas
*Gladewater, Texas	Waskom, Texas
Willow Springs, Texas	Greenwood, Louisiana
*Longview, Texas	Shreveport, Louisiana

ISSUED SEPTEMBER 6, 1938 EFFECTIVE SEPTEMBER 5, 1938

Issued under authority of Special Circular M No. 1 and in conformity with Interstate Commerce Commission Docket No. MC-F-378.

Issued by
T. E. Huffman
General Freight Agent
1025 Elm Street
Dallas, Texas

1467 *T. & P. Motor Transport Company's Exhibit 86.* C-10.1

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 59488*

SOUTHWESTERN TRANSPORTATION COMPANY,
A CORPORATION,
TEXARKANA, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 9th day of October, A. D., 1947

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions

* This adoption notice does not have the effect of eliminating Wills Point, Texas or Gladewater, Texas or Longview, Texas as points served by Southern Transportation Company but has the effect of establishing service at said points by The Texas and Pacific Motor Transport Company.

* This certificate covers the authority granted in the certificate issued in proceeding on January 30, 1942, and also embraces the operations authorized in MC 59488 Sub 16.

of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is Ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is Further Ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Regular Routes:

General commodities, except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Dexter, Mo., and Malden, Mo.:

From Dexter over Missouri Highway 25 to Malden, and return over the same route.

Service is authorized to and from all intermediate points.

Between Malden, Mo., and Memphis, Tenn.:

From Malden over U. S. Highway 62 to junction U. S. Highway 61, and thence over U. S. Highway 61 to Memphis, and return over the same route.

Service is authorized to and from the intermediate point of Blytheville, Ark.; and the off-route points of Lilbourn, New Madrid, and Caruthersville, Mo.

Between Malden, Mo., and Jonesboro, Ark.:

From Malden over U. S. Highway 62 to Piggott, Ark., thence over Arkansas Highway 1 via Paragould, Ark., to Jonesboro, and return over the same route.

1468 Service is authorized to and from all intermediate points.

Between Jonesboro, Ark., and Memphis, Tenn.:

From Jonesboro over U. S. Highway 63 to Turrell, Ark., and thence over U. S. Highway 61 to Memphis, and return over the same route.

Service is authorized to and from the intermediate point of Trumann, Ark.

Between Memphis, Tenn., and Texarkana, Tex., as follows:

From Memphis over U. S. Highway 70 to Little Rock, Ark., and thence over U. S. Highway 67 to Texarkana, and return over the same route.

Service is authorized to and from the intermediate points of Brinkley, Hazen, Little Rock, North Little Rock, and Texarkana, Ark.

From Memphis over U. S. Highway 70 to junction Arkansas Highway 17, thence over Arkansas Highway 17 to junction U. S. Highway 79, thence over U. S. Highway 79 to Magnolia, Ark., and thence over U. S. Highway 82 to Texarkana, and return over the same route.

Service is authorized to and from the intermediate points of Brinkley, Ark., and those between Brinkley and Texarkana; and the off-route point of Kedron, Ark.

Between Little Rock, Ark., and Gillett, Ark.:

From Little Rock over Arkansas Highway 30 to De Witt, Ark., thence over Arkansas Highway 1 to Gillett, and return over the same route.

Service is authorized to and from all intermediate points.

Between Stuttgart, Ark., and Hazen, Ark.:

From Stuttgart over Arkansas Highway 11 to Hazen, and return over the same route.

Service is authorized to and from all intermediate points.

Between Little Rock, Ark., and Pine Bluff, Ark., as follows:

From Little Rock over U. S. Highway 65 to Pine Bluff;

From Little Rock over Arkansas Highway 30 to England, Ark., thence over Arkansas Highway 15 to junction U. S. Highway 79, and thence over U. S. Highway 79 to Pine Bluff; and

Return over these routes to Little Rock.

1469 Service is authorized to and from all intermediate points except those on U. S. Highway 65.

Between Little Rock, Ark., and Fordyce, Ark.:

From Little Rock over U. S. Highway 167 to Fordyce, and return over the same route.

Service is not authorized to or from intermediate points.

Between Jonesboro, Ark., and Hickory Ridge, Ark.:
From Jonesboro over Arkansas Highway 39 to Hickory Ridge, and return over the same route.
Service is authorized to and from all intermediate points.

Between Paragould, Ark., and St. Louis, Mo.:
From Paragould over Arkansas Highway 25 to the Arkansas-Missouri State line, thence over Missouri Highway 25 to Kennett, Mo., thence over Missouri Highway 84 to Hayti, Mo., and thence over U. S. Highway 61 to St. Louis, and return over the same route.
Service is not authorized to or from intermediate points.

Between Lewisville, Ark., and Shreveport, La.:
From Lewisville over Arkansas Highway 29 to the Arkansas-Louisiana State line, thence over Louisiana Highway 10 to junction U. S. Highway 80, and thence over U. S. Highway 80 to Shreveport, and return over the same route.
Service is authorized to and from all intermediate points.

Between Texarkana, Tex., and Shreveport, La.:
From Texarkana over U. S. Highway 71 to Shreveport, and return over the same route.
Service is authorized to and from the intermediate point of Texarkana, Ark.

Between Texarkana, Ark., and Dallas, Tex., as follows:
From Texarkana over U. S. Highway 67 via Sulphur Springs, Tex., to Dallas;
From Texarkana to Sulphur Springs as specified above, thence over Texas Highway 11 to Commerce, Tex., thence over Texas Highway 24 to Greenville, Tex., and thence over U. S. Highway 67 to Dallas; and
Return over these routes to Texarkana.
1470 Service is authorized to and from all intermediate points except those on U. S. Highway 67 between Greenville and Dallas.

Between Dallas, Tex., and Mt. Pleasant, Tex.:
From Dallas over U. S. Highway 80 to Wills Point, Tex., thence over Texas Highway 64 to Tyler, Tex., and thence over U. S. Highway 271 to Mt. Pleasant, and return over the same route.

Service is authorized to and from all intermediate points other than Wills Point, Tex., and those between Wills Point and Dallas.

Between Gladewater, Tex., and Shreveport, La.:
From Gladewater over U. S. Highway 80 to Shreveport, and return over the same route.
Service is not authorized to or from intermediate points.

Between Tyler, Tex., and Waco, Tex.:
From Tyler over Texas Highway 31 to Waco, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route point of Purdon, Tex.

Between Tyler, Tex., and Lufkin, Tex.:
From Tyler over U. S. Highway 69 to Lufkin, and return over the same route.
Service is authorized to and from all intermediate points.

Between Brinkley, Ark., and Hickory Ridge, Ark.:
From Brinkley over Arkansas Highway 17 to junction Arkansas Highway 39, thence over Arkansas Highway 39 to Hickory Ridge, and return over the same route.
Service is authorized to and from all intermediate points.

General commodities, except those of unusual value, and except livestock, loose bulk commodities, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Jonesboro, Ark., and Blytheville, Ark.:
From Jonesboro over Arkansas Highway 18 to Blytheville, and return over the same route.
Service is authorized to and from intermediate points which are stations on the railroad of the St. Louis Southwestern Railway Company.

General commodities, except commodities in bulk, commodities of unusual value, commodities requiring special equipment, and except household goods as defined
1471 in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467,

Between Pine Bluff, Ark., and Pine Bluff Municipal Airport, Ark.:
From Pine Bluff over U. S. Highway 65 to junction unnumbered highway, thence over unnumbered highway to Pine Bluff Municipal Airport, and return over the same route.

Service is not authorized to or from intermediate points.

General commodities, except automobiles, livestock, gasoline, and household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467,

Between Dallas, Tex., and Fort Worth, Tex.:

From Dallas over Texas Highway 114 to junction Texas Highway 121, thence over Texas Highway 121 to Fort Worth, and return over the same route. Service is authorized to and from all intermediate points.

It is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And it is Further Ordered, That this certificate shall supersede the certificate issued in this proceeding on January 30, 1942, which is hereby canceled.

By the Commission, division 5.

(SEAL)

W. P. Bartel,
Secretary.

1473 *T. & P. Motor Transport Company's Exhibit 87*

C-15.1

Certificate of Public Convenience and Necessity
(Modifications and additions are indicated thus: #)

No. MC 78786*

Pacific Motor Trucking Company, a Corporation
San Francisco, California

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 5th day of September, A. D., 1945.

After Due Investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding:

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

For Commodity Specifications hereinafter referred to by symbol indicated, see Sheets 35 and 36.

For Special Conditions hereinafter referred to by number see Sheets 36 to 47 inclusive.

Item 1
Irregular Route
Commodity A
Condition 1
Source: MC 1592
By MC-F-1880

Between points and places within three miles of Portland, Oreg., including Portland.

Item 2
Regular Route
Commodity A
Condition 2
Source: MC 1592
MC 1592 Sub 11
By MC-F 1880
Also MC 78786
Sub 144

Between Portland, Oreg., and Ashland, Oreg.:

From Portland over U. S. Highway 99W to junction U. S. Highway 99 (also from Portland over U. S. Highway 99E to junction U. S. Highway 99) and thence over U. S. Highway 99 to Ashland, and return over these routes.

Service is authorized to and from all intermediate points, and the off-route points of Springfield, Riddle, Glendale, Brownsville, Coburg, Clackamas, and Park Place, Oreg.; points and places on Oregon Highway 22 between Salem and Dallas, Oreg., inclusive; points and places on Oregon Highway 211 between Salem and Silverton, Oreg., inclusive; points and places on unnumbered highway through Mt. Angel, Oreg., between Silverton and Woodburn, Oreg., inclusive; points and places on Oregon Highway 214 be-

tween Woodburn and Marquam, Oreg., inclusive; points and places on Oregon Highway 51 between Monmouth, Oreg., and junction Oregon Highways 51 and 22, including Monmouth; and points and places on Oregon Highway 26 between Albany and Corvallis, Oreg., inclusive.

Item 3
Regular Route
Commodity T
Condition 31
Source: MC 78786 Sub 144.

Between Albany, Oreg., and Lebanon, Oreg.:

From Albany over U. S. Highway 20 to Lebanon, and return over the same route.

Service is not authorized to or from intermediate points.

Between junction U. S. Highway 99-W and Oregon Highway 233 near Amity, Oreg., and the junction of U. S. Highway 99-W and Oregon Highway 221 north of Lafayette, Oreg.:

From junction U. S. Highway 99-W and Oregon Highway 233, over Oregon Highway 233 to Dayton, Oreg., thence over Oregon Highway 221 to junction U. S. Highway 99-W, and return over the same route.

Service is authorized to and from the intermediate point of Dayton, Oreg.

Between Lebanon, Oreg., and Tangent, Oreg., for operating convenience only:

From Lebanon over unnumbered county road to Tangent, and return over the same route.

Service is not authorized to or from intermediate points.

Item 4.
Regular Route
Commodity T
Source: MC 78786 Sub 144

Between the following points for *operating convenience only:*

Between City of Coos Bay, Oreg., and Empire, Oreg :

From City to Coos Bay over Oregon Highway 243 to Empire, and return over the same route.

Between Cloverdale, Oreg., and Tillamook, Oreg.:

From Cloverdale over U. S. Highway 101 via Hebo, Oreg., to Tillamook, and return over the same route.

Between Valley Junction, Oreg., and Hebo, Oreg.:

From Valley Junction over Oregon Highway 14 to Hebo, and return over the same route.

Between McMinnville, Oreg., and junction Oregon Highway 233 and unnumbered county road south of Dayton, Oreg.:

1475 From McMinnville over unnumbered county road to Junction Oregon Highway 233, and return over the same route.

Service is not authorized to or from intermediate points on the above routes.

Item 5
Regular Route
Commodity A
Condition 2
Source: MC 1592
By-MC-F-1880

Between Portland, Oreg., and Coquille, Oreg.:

From Portland over U. S. Highway 99W to junction U. S. Highway 99 (also from Portland over U. S. Highway 99E to junction U. S. Highway 99), thence over U. S. Highway 99 to junction Oregon Highway 42, and thence over Oregon Highway 42 to Coquille;

From Portland over Oregon Highway 2 to Forest Grove, Oreg., thence over Oregon Highway 47 to junction U. S. Highway 99-W, thence over U. S. Highway 99W to junction Oregon Highway 18, thence over Oregon Highway 18 to Otis, Oreg., and thence over U. S. Highway 101 to Coquille; and

Return over these routes.

Service is authorized to and from all intermediate points, and the off-route points on Oregon Highway 14 west of Valley Junction, Oreg., which are not more than ten miles by highway from Willamina, Oreg., and those on U. S. Highway 101 south

of Tillamook, including Tillamook, Oreg., which are not more than ten miles by highway from Tillamook.

Item 6
Regular Route
Commodity P
Source: MC 1592 Sub 10
By-MC-F-1880

Between Forest Grove, Oreg., and Tillamook, Oreg.:
From Forest Grove over Oregon Highway 6 to Tillamook, and return over the same route.
Service is not authorized to or from any points on the above-specified route except as otherwise authorized above.

Between Otis Junction, Oreg., and Cloverdale, Oreg.:
From Otis Junction over U. S. Highway 101 to Cloverdale, and return over the same route.
Service is not authorized to or from any points on the above-specified route except as otherwise authorized above.

Item 7
Regular Route
Commodity T
Source: MC 78786 Sub 5

Between North Bend, Oreg., and Empire, Oreg.:
From North Bend over unnumbered highway to Empire, and return over the same route.
Service is authorized to and from all intermediate points, and off-route points on the southern shore of Coos Bay within three miles of Empire, Oreg.

1476 *Item 8*
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between City of Coos Bay, Oreg., and Powers, Oreg.:
From City of Coos Bay over U. S. Highway 101 to Coquille, thence over Oregon Highway 42 to Myrtle Point, and thence over unnumbered highway to Powers, and return over the same route.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of the above-specified regular route.

Item 9
Regular Route
Commodity P
Condition 4
Source: MC 1592 Sub 7 and MC 480, By MC-F-1880

Between Eugene and Fort Klamath, Oreg., and Klamath Falls, Oreg.:
From Eugene over U. S. Highway 99 to Goshen Oreg., thence over Oregon Highway 58 to junction U. S. Highway 97, thence over Highway 97 to Klamath Falls;
From Eugene over U. S. Highway 99 to junction Oregon Highway 28, thence over Oregon Highway 28 to junction unnumbered highway about three miles west of Thurston, Oreg., thence over unnumbered highway via Lowell, Oreg., to junction Oregon Highway 58, and thence to Klamath Falls as specified above;
From Fort Klamath over Oregon Highway 62 to junction U. S. Highway 97 and thence to Klamath Falls as specified above; and
Return over these routes.
Service is authorized to and from all intermediate points on the above-specified routes and off-route points which are rail stations on the Southern Pacific Company's Rail line between Eugene and Klamath Falls.

Item 10
Regular Route
Commodity A
Source: MC 33740
By MC-F-1880

Between Corvallis, Oreg., and Siletz, Oreg., as follows:
From Corvallis, over Oregon Highway 26 to Toledo, Oreg., thence over Oregon Highway 229 to Siletz; and
Return from Siletz over unnumbered highway via Nashville and Summit, Oreg., to junction Oregon Highway 26, thence over Oregon Highway 26 to Corvallis.
Service is authorized to and from all intermediate points.

Item 11
Regular Route
Commodity P
Source: MC 1592 Sub 9

Between Medford, Oreg., and Camp White, Oreg.:
From Medford over Oregon Highway 62 to Camp White, and return over the same route.

1477

Between junction U. S. Highway 99 and unnumbered highway north of Central Point, Oreg., and Camp White, Oreg.:

From junction U. S. Highway 99 and unnumbered highway north of Central Point, over unnumbered highway to junction Oregon Highway 62, thence over Oregon Highway 62 to Camp White, and return over the same route.

Between Gold Hill, Oreg., and Camp White, Oreg.:

From Gold Hill over Oregon Highway 234 to junction Oregon Highway 62, thence over Oregon Highway 62 to Camp White, and return over the same route.

Between Eagle Point, Oreg., and Camp White, Oreg.:

From Eagle Point over Oregon Highway 62 to junction Oregon Highway 234, thence over Oregon Highway 234 to Camp White;

From Eagle Point over U. S. Highway 62 to Camp White; and

Return over these routes to Eagle Point.

Service is not authorized to or from intermediate points on the above-specified routes.

Item 12
Regular Route
Commodity A
Source: MC 78786 Sub 4, MC 480 and MC 480 Sub 3.
By MC-F-1880

Between points in Oregon and California:

From Klamath Falls, Oreg., over Oregon Highway 66 to junction Oregon Highway 39, and thence over Oregon Highway 39 to Malin, Oreg.;

From junction Oregon Highway 39 and unnumbered highway about two miles east of Merrill, Oreg., over unnumbered highway to the Oregon-California State line, thence over unnumbered highway via Tule Lake, Calif., to junction U. S. Highway 299, and thence over U. S. Highway 299 to Alturas, Calif.:

From Tule Lake, Calif., over unnumbered Highway to the California-Oregon State line, thence over unnumbered highway to junction Oregon Highway 39 about two miles west of Malin, Oreg., and thence over Oregon Highway 39 to Malin, Oreg.; and Return over these routes to the above-specified origin points.

Service is authorized to and from all intermediate points on the above-specified routes and off-route points which are stations on the line of the Southern Pacific Company within one mile of that part of the above-specified route between Klamath Falls, Oreg., and Tule Lake, Calif.; also to and from the off-route point of Tionesta, Calif., and those off-route points within eight miles of Tule Lake, Calif.

1478 *Item 13*
Regular Route
Commodity A
Termini and all intermediate points subject to Condition 2. Off-route points subject to Conditions as noted.
Source: MC 1592 Sub 4 and MC 1592 Sub 6
By MC-F-1880; MC 78786, MC 78786 Sub 47 and MC 78786 Sub 64.

Between Ashland, Oreg., and South San Francisco, Calif.:

From Ashland over U. S. Highway 99 to Red Bluff, Calif., thence over U. S. Highway 99-W to Davis, Calif., (also from Red Bluff over U. S. Highway 99-E to junction U. S. Highway 40, thence over U. S. Highway 40 to Davis), thence over U. S. Highway 40 via Cordelia, Calif., to San Francisco, Calif., and thence over Bypass U. S. Highway 101 to South San Francisco;

From Ashland to Cordelia as specified above thence over California Highway 12 to junction California Highway 29, thence over California Highway 29 to junction California Highway 37, thence over California Highway 37 to junction U. S. Highway 101, and thence over Bypass U. S. Highway 101 to South San Francisco; and

Return over these routes to Ashland.
Service is authorized to and from all intermediate points.
Service is authorized to and from off-route points within two miles of that portion of U. S. Highway 99 between Redding and Dunsmuir and to and from rail stations on the line of the Southern Pacific Company between Redding and Dunsmuir, subject to Condition 5, (except that service is not authorized to or from off-route stations north of Redding or south of Coram, Calif.), and to and from the off-route point of Biggs, Calif., subject to Condition 3.

Item 14
Regular Route
Commodity T
Condition 3
Source: 78786

Between Yreka, Calif., and Dunsmuir, Calif.:

From Yreka over U. S. Highway 99 to Dunsmuir, and return over the same route.

Between Yreka, Calif., and junction unnumbered Highway and U. S. Highway 99:

From Yreka over unnumbered highway via Montague and Grenada to junction U. S. Highway 99, and return over the same route.

Service is authorized to and from all on-rail intermediate points and all on-rail off-route points within two miles of the above-specified routes.

Item 15
Regular Route
Commodity D
Condition 5
Source: MC 78786 Sub 47

Between Redding, Calif., and Kennett, Calif.:

From Redding over U. S. Highway 99 to junction Kennett Road, thence over Kennett Road via Buckeye, Newton, and Summit City, Calif., to Kennett (also from junction U. S. Highway 99 and Kennett Road over Kennett Road via Buckeye, Newton, Summit City and Shasta Dam, Calif., to Kennett):

1479

From Redding over U. S. Highway 99 to junction Coram Road, thence over Coram Road to junction Kennett Road, and thence over Kennett Road to Kennett (also over Kennett Road via Shasta Dam to Kennett); and

Return over these routes to Redding.

Service is authorized to and from all intermediate points.

Item 16
Regular Route
Commodity T
Condition 6
Source: MC 78786 Sub 75

Between Redding, Calif., and Buckeye, Calif., and the site of Keswick Dam, Calif.:

From Redding over unnumbered highways to the site of Keswick Dam;

From Buckeye over unnumbered highways to the site of Keswick Dam: and

Return over these routes to Buckeye and Redding.

Service is authorized to and from all intermediate points on the above specified routes.

Item 17
Irregular Route
Commodity T
Condition 7
Source: MC 78786 Sub 93

Between Chico, Calif., and the site of the Chico Army Airport, Calif.

Item 18
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between Marysville, Calif., and Oroville, Calif.:

From Marysville over California Highway 24 to Oroville, and return over the same route.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within four miles of, the above-specified route.

Between Marysville, Calif., and Colusa, Calif.:

From Marysville over California Highway 20 to Colusa, and return over the same route.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified route.

Between Williams, Calif., and Colusa, Calif.:

From Williams over California Highway 20 to Colusa, and return over the same route.

Service is not authorized to or from intermediate or off-route points.

1480 *Item 19*
Regular Route
Commodity P
Condition 6
Source: MC 78786 Sub 81

Between Ostrom, Calif., and Wheatland, Calif.:

From Ostrom over unnumbered highway to Camp Beale (formerly known as Marysville Army Cantonment), Calif., and thence over unnumbered highway to Wheatland, and return over the same route.

Service is authorized to and from the intermediate point of Camp Beale.

Item 20
Regular Route
Commodity A
Source: MC 78786 Sub 88

Between points and places in California:

From Sacramento over California Highway 24 to Yuba City.

Service is authorized to and from all intermediate and off-route points between Woodland and Yuba City, which are stations on the line of the Southern Pacific Company.

From Robbins over unnumbered county roads to Josephine.

Service is authorized to and from all intermediate and off-route points which are stations on the line of the Southern Pacific Company.

From Knights Landing over California Highway 45 to Hamilton City.

Service is authorized to and from all intermediate and off-route points between Knights Landing and Bover and between Grimes and Hamilton City, which are stations on the line of the Southern Pacific Company.

From Arbuckle over unnumbered county roads to Grimes.

Service is authorized to and from all intermediate and off-route points between Harrington and Grimes, which are stations on the line of the Southern Pacific Company.

From Orland over California Highway 32 to Chico.

Service is authorized to and from all intermediate and off-route points between Orland and Corning, between Wyo and Hamilton City, and between Cana and Chico, which are stations on the line of the Southern Pacific Company.

From Proberta over unnumbered county roads to Los Molinos.

Service is authorized to and from all intermediate and off-route points between Red Bluff and Los Molinos, which are stations on the line of the Southern Pacific Company.

From Corning over unnumbered county roads to junction unnumbered county road and U. S. Highway 99-E east of Vina.

1481 Service is authorized to and from all intermediate and off-route points between Los Molinos and Cana, which are stations on the line of the Southern Pacific Company.

From Roseville over unnumbered county roads to junction unnumbered county road with U. S. Highway 40 east of McClellan Air Base.

Service is authorized to and from all intermediate and off-route points between Sacramento and Roseville, which are stations on the line of the Southern Pacific Company.

Return over the above-specified routes to points of origin.

Routes over which said carrier is authorized to operate *for operating convenience only:*

From Zamora over unnumbered county roads to junction unnumbered county road with California Highway 24 west of Knights Landing;
From Maxwell over unnumbered county roads to Denco;
From Norman over unnumbered county roads to Princeton;
From Cortena over unnumbered county roads to Colusa;
From Cadora over unnumbered county roads to junction unnumbered county road and U. S. Highway 99-W south of Willows;
From Willows over unnumbered county roads to Glenn;
From Lyman over unnumbered county roads to Jacinto;
From Meridian over unnumbered county roads to junction unnumbered county road south of Josephine; and
Return over the above-specified routes to points of origin.

Item 21
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between points and places in California:
From Sacramento over U. S. Highway 50 to Placerville;
From Placerville, over California Highway 49 to El Dorado;
From Shingle Springs over unnumbered highway, via Latrobe, to junction U. S. Highway 50;
From Citrus over unnumbered highway to Fair Oaks; and
Return over these routes.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above specified regular routes.

1482

Item 22
Regular Route
Commodity T
Condition 6

Between Sacramento, Calif., and Fair Oaks, Calif.:
From Sacramento over U. S. Highway 40 to Ben Ali, Calif., thence over

Source: MC 78786 Sub 73

unnumbered highways via the site of McClellan Field, Calif., to Fair Oaks, and return over the same route.
Service is authorized to and from the intermediate point of the site of McClellan Field, Calif.

Item 22-A#
Regular Route
Commodity T
Source: MC 78786 Sub 143
By MC-F 2360

Between Sacramento, Calif., and Nevada City, Calif.:
From Sacramento over U. S. Highway 40 to Auburn, Calif., thence over California Highway 49 via Grass Valley, Calif., to Nevada City, and return over the same route.
Between Grass Valley, Calif., and Colfax, Calif.:
From Grass Valley over unnumbered highway to Colfax, and return over the same route.
Service is authorized to and from all intermediate points, except that service is not authorized between Sacramento and Auburn, nor at points between Sacramento and Auburn.

Item 22-B#
Regular Route
Commodity W
Source: MC 78786 Sub 143
By MC-F 2360

From Colfax, Calif., to Nevada City, Calif.:
From Colfax over unnumbered county highway to Grass Valley, Calif., thence over California Highway 49 to Nevada City; and
Return, with no transportation for compensation except as otherwise authorized.
Service is authorized to and from all intermediate points, and the off-route points within eight miles of Nevada City and those within eight miles of the highways specified.

Item 22-C#
Regular Route
Commodity X
Source: MC 78786 Sub 143
By MC-F 2360

From Nevada City, Calif., to Colfax, Calif.:
From Nevada City over California Highway 49 to Grass Valley, Calif., thence over unnumbered county highway to Colfax; and
Return, with no transportation for compensation except as otherwise authorized.

	Service is authorized to and from all intermediate points, and the off-route points within eight miles of Nevada City and those within eight miles of the highways specified.
1483 *Item 23* Regular Route Commodity T Condition 3 Source: MC 78786	Between Auburn, Calif., and Truckee, Calif.: From Auburn over U. S. Highway 40 to Truckee, and return over the same route. Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above specified regular route.
Item 23-A# Regular Route Commodity T Condition 34 Source: MC 78786 Sub 147	Between Auburn, Calif., and Roseville, Calif.: From Auburn over U. S. Highway 40 to Roseville, and return over the same route. Service is authorized to and from all intermediate points.
Item 24 Regular Route Commodity T Termini and all intermediate points are subject to Condition 16. Off-route points authorized are subject to Condition 3. Source: MC 78786, MC 78786 Sub 134.	Between Truckee, Calif., and Tahoe City, Calif.: From Truckee, over U. S. Highway 40 to junction California Highway 89, thence over California Highway 89 to Tahoe City, and return over the same route. Service is authorized to and from all intermediate points. Service is authorized to and from all on-rail off-route points within two miles of the above-specified route. California-Nevada State line:
Item 25 Regular Route Commodity F Source: MC 78786	Between Tahoe City, Calif., and the From Tahoe City over unnumbered highway to the California-Nevada State line; From Tahoe City over California Highway 89 to junction U. S. Highway 50, thence over U. S. Highway 50 to the California-Nevada State line; and

Return over these routes to Tahoe City.

Service is authorized to and from all intermediate points; and the off-route points of Fallen Leaf, and those in California on Lake Tahoe.

Between Esparto, Calif., and Rumsey, Calif.:

From Esparto over California Highway 16 to Rumsey, and return over the same route.

Service is authorized to and from all intermediate points.

Item 26
Regular Route
Commodity T
Condition 3
Source: MC 78786

1484

Between points and places in California:

From Davis over California Highway 28 to Winters, thence over unnumbered highway to Madison, and thence over California Highway 16 to Esparto;

From Davis over U. S. Highway 40 to Fairfield;

From Vacaville over unnumbered highway via Hartley, to Winters;

From Fairfield over unnumbered highway via Tolenas, Vanden, and Cannon, to Elmira, thence over unnumbered highway in a northerly direction to junction U. S. Highway 40;

From Elmira over unnumbered highway in a westerly direction to Vacaville;

From Batavia over unnumbered highway in a northerly direction to junction U. S. Highway 40;

From Dixon over unnumbered highway to Allendale;

From Suisun City over unnumbered highway to Fairfield, thence over U. S. Highway 40 via Cordelia Junction to junction unnumbered highway, thence over unnumbered highway to Vallejo;

From Suisun City to junction U. S. Highway 40 and unnumbered highway as specified above, thence over unnumbered highway to Benicia;
From Benicia over California Highway 21 to Cordelia, and thence over unnumbered highway to Cordelia Junction; and
Return over these routes.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular routes.

Item 27
Regular Route
Commodity E
Condition 3
Source: MC 78786

Between Crockett, Calif., and Calistoga, Calif.:
From Crockett over California Highway 29 to Calistoga and return over the same route.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular route.

Item 27-A#
Regular Route
Commodity Z
Condition 35
Source: MC 78786 Sub 151

Between Vallejo, Calif., and Calistoga, Calif.:
From Vallejo over California Highway 29 to Calistoga, and return over the same route.
Service is authorized to and from all on-rail intermediate points.

Item 28
Regular Route
Commodity F
Source: MC 78786 1485

Between points and places in California:
From Martinez over California Highway 21 to San Ramon;
From Martinez over California Highway 4 to Avon, thence over unnumbered highway to Concord, and thence over California Highway 24 to junction California Highway 21;
From Concord over unnumbered highway to Pacheco; and
Return other these routes to the above-specified origin points.

Service is authorized to and from all intermediate points; and off-route points within one mile of the above-specified routes.

Item 29
Regular Route
Commodity S
Condition 26
Source: MC 78786 Sub 122

Between Sausalito, Calif., and Santa Rosa, Calif.:

From Sausalito over unnumbered highway to junction U. S. Highway 101, thence over U. S. Highway 101 to Santa Rosa, and return over the same route.

Between Tiburon, Calif., and junction unnumbered highway and U. S. Highway 101 east of Alto, Calif.:

From Tiburon over unnumbered highway to junction U. S. Highway 101, and return over the same route.

Between Manzanita, Calif., and Larkspur, Calif.:

From Manzanita over unnumbered highway to Larkspur, and return over the same route.

Between Junction of U. S. Highway 101 and California Highway 37, and Sonoma, Calif.:

From junction of U. S. Highway 101 and California Highway 37 over California Highway 37 to Shellville, thence over unnumbered highway to junction California Highway 12, thence over California Highway 12 to Sonoma, and return over the same route.

Between Petaluma, Calif., and Forestville, Calif.:

From Petaluma over U. S. Highway 101 to junction unnumbered highway, thence over unnumbered highway via Stony Point to Sebastopol (also from Cotati over unnumbered highway to Sebastopol), thence over California Highway 12 to Forestville, and return over the same route.

Between Santa Rosa, Calif., and Sebastopol, Calif.:

From Santa Rosa over California Highway 12 to Sebastopol, and return over the same route.

1486 Service is authorized to and from all intermediate points and off-route points within 2 miles of the above described routes, which are stations on the line of the Northwestern Pacific Railroad Company, the Petaluma & Santa Rosa Railroad Company and the Southern Pacific Company.

Item 30
Regular Route
Commodity S
Condition 25
Source: MC 78786 Sub 122

Between California City, Calif., and Tiburon, Calif.:

From California City over unnumbered highway to Tiburon, and return over the same route.

Between Larkspur, Calif., and San Anselmo, Calif.:

From Larkspur over unnumbered highway to San Anselmo, and return over the same route.

Between San Rafael, Calif., and Manor, Calif.:

From San Rafae' over unnumbered highway via San Anselmo to Manor, and return over the same route.

Between San Rafael, Calif., and San Quentin, Calif.:

From San Rafael over U. S. Highway 101 to junction with unnumbered highway, thence over unnumbered highways to San Quentin, and return over the same route.

Between Shellville, Calif., and Skagg's Island, Calif.:

From Shellville over California Highway 37 to junction unnumbered highway, thence over unnumbered highway to Skagg's Island, and return over the same route.

Between Petaluma, Calif., and Sonoma, Calif.:

From Petaluma over unnumbered highway to junction California Highway 12, thence over California Highway 12 to Sonoma, and return over the same route.

Between Sonoma, Calif., and Los Guilicos, Calif.:

From Sonoma over California Highway 12 to Warfield (also from Sonoma over California Highway 12 to junction unnumbered highway, thence over unnumbered highway via El Verano and Glen Ellen to junction with California Highway 12 north of Warfield), thence over California Highway 12 to Los Guilicos, and return over the same route.

Between junction of U. S. Highway 101 and unnumbered highway east of Fulton, Calif., and Cazadero, Calif.:

1487

From junction of U. S. Highway 101 and unnumbered highway over unnumbered highway via Trenton to junction California Highway 12 at Forestville, thence over California Highway 12 to Guerneville, (also from Trenton over unnumbered highway via Cosmos and via Rio Dell and Cosmos to Guerneville), thence over California Highway 12 to junction unnumbered highway north of Duncan Mills, thence over unnumbered highway to Cazadero, and return over the same route.

Service is authorized to and from all intermediate points and the off-route points of Lakeville and Duncan Mills and points within one mile of the above-described routes.

Item 31
Irregular Routes
Commodity B
Source: MC 78786

From points and places in Marin and Sonoma Counties, Calif., and those in that part of Napa County, Calif., west of California Highways 28 and 29, to railroad stations in the same territory.

Item 32
Irregular Route
Commodity C
Source: MC 78786

From railroad stations in the California territory described in Item 31, to other points and places in the same territory.

Item 33
Regular Route
Commodity T
Source MC 78786
Sub 37

Between San Francisco, Calif., and Sausalito, Calif., as follows:

From San Francisco over U. S. Highway 101 to junction unnumbered highway (Sausalito lateral), thence over unnumbered highway (Sausalito lateral), to Sausalito:

From San Francisco over U. S. Highway 101 to junction unnumbered highway near Waldo, Calif., thence over unnumbered highway to Sausalito; and,

Return over these routes to San Francisco.

Service is not authorized to or from intermediate points.

Item 34
Regular Route
Commodity F
Source: MC 78786

Between San Rafael, Calif., and Point Reyes, Calif.:

From San Rafael over unnumbered highway via Fairfax, Lagunitas, Tocaloma, and Olema, to Inverness and Point Reyes (also from Tocaloma over unnumbered highway along the north side of Lagunitas Creek to Point Reyes, and return over the same route.

Service is authorized to and from all intermediate points except Manor, and those between Manor and San Rafael; and to and from all off-route points within five miles of the above-specified route.

1488 *Item 35*
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between Santa Rosa, Calif., and Willits, Calif.:

From Santa Rosa over U. S. Highway 101 to Willits, and return over the same route.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular route.

Item 36
Regular Route
Commodity A
Source: MC 78786
Sub 34
By MC-F-272

Between Kelseyville, Calif., and Hopland, Calif.:
From Kelseyville over California Highway 29 to junction unnumbered highway, thence over unnumbered highway to Hopland, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route point of Lakeport, Calif.

Item 37
Regular Route
Commodity T
Source: MC 78786
Sub 33

Between Ukiah, Calif., and Hopland and Lakeport, Calif.:
From Ukiah over U. S. Highway 101 to Hopland;
From Ukiah over U. S. Highway 101 to junction California Highway 20 and thence over California Highway 20 to Upper Lake, Calif., thence over California Highway 29 to Lakeport; and
Return over the same routes.
Service is authorized to and from all intermediate points between Upper Lake and Lakeport, not including Upper Lake.

Item 38#
Regular Route
Commodity A
Condition 9
Source: MC 78786
Sub 46
By MC-F-841
Also MC 78786
Sub 143

Between Ukiah, Calif., and Upper Lake, Calif.:
From Ukiah over California Highway 20 to Upper Lake, and return over the same route.
Service is authorized to and from the intermediate and off-route points of Hemlock, Le Trianon, Blue Lake, Camp Innis, Laurel Dell, Saratoga Springs, Bachelor Valley, Middle Creek Valley, Clover Valley, Laurel Beach, Clear Lake Gardens, Clear Lake Lodge, Nice, Lucerne, Cold Creek Station, and Potter Valley, Calif.

Item 39
Regular Route
Commodity G
Source: MC 78786

From Lakeport, Calif., to Petaluma, Calif., during the season extending from the 1st day of July to the 15th day of October, inclusive, as follows:

Sub 31

From Lakeport over to California Highway 29 to Upper Lake, Calif., thence over California Highway 20 to Ukiah, Calif., thence over U. S. Highway 101 via Hopland and Santa Rosa, Calif., to Petaluma;

1489

From Lakeport over California Highway 29 to junction unnumbered highway, thence over unnumbered highway to Hopland, Calif., thence over U. S. Highway 101 to Healdsburg, Calif., thence over unnumbered highway to junction California Highway 12, thence over California Highway 12 to Santa Rosa, Calif., and thence over U. S. Highway 101 to Petaluma; and

Return, with no transportation for compensation except as otherwise authorized, over these routes to Lakeport.

Service is authorized from intermediate and off-route points within 20 miles of Lakeport for pick-up only; and to Sebastopol and Santa Rosa, Calif., for delivery only.

Item 40
Regular Route
Commodity A
Source: MC 78786
Sub 94

Between Fernbridge, Calif., and Ferndale, Calif.:

From Fernbridge over unnumbered highway to Ferndale, and return over the same route.

Service is not authorized to or from intermediate points.

Item 41
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between South Bay, Calif., and South Fork, Calif.:

From South Bay over U. S. Highway 101 to South Fork, and return over the same route.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular route.

Item 42
Regular Route
Commodity T
Condition 8
Source: MC 78786
Sub 124

Between South Bay, Calif., and Eureka, Calif.;
From South Bay over U. S. Highway 101 to Eureka, and return over the same route.
Service is not authorized to or from intermediate points.

Item 43
Regular Route
Commodity F
Source: MC 78786

Between points and places in California;
From Oakland (including Piedmont) over U. S. Highway 101E via Hayward, Niles and Mission San Jose, to Milpitas;
From San Leandro over California Highway 17 to Warm Springs;
From Mt. Eden over unnumbered highway via. Hayward, to junction U. S. Highway 50;
From Centerville over unnumbered highway to Newark;
From Hayward over unnumbered highway to Russell;
From junction U. S. Highway 101E and U. S. Highway 50 over U. S. Highway 50 to Livermore;
From Niles over unnumbered highway to Sunol, thence over California Highway 21 to junction unnumbered highway, thence over unnumbered highway via Pleasanton, to Livermore;
From Centerville over unnumbered highway to Niles;
From junction California Highway 17 and unnumbered highway over unnumbered highway, via Decoto, to junction U. S. Highway 101E;
From Irvington over unnumbered highway to Mission San Jose;
From Pleasanton over unnumbered highway to Santa Rita; and
Return over these routes to the above-specified origin points.

Service is authorized to and from all intermediate points; and to and from all on-rail off-route points within two miles of the above-specified routes.

Item 44
Regular Route
Commodity H
Condition 6
Source: MC 78786
Sub 110

Between Livermore, Calif., and Greenville, Calif.;

From Livermore over an unnumbered highway to junction U. S. Highway 50, thence over U. S. Highway 50 to Greenville, and return over the same route.

Service is authorized to and from all intermediate points; all points which are stations on the rail line of the Southern Pacific Company between Livermore and Greenville; and the off-route points within 7 miles of Livermore which are known as Wagoner Field (U. S. Navy Airport), Grapeland (Location of Wente Brothers Winery, Concannon Vineyards, and Carlo Ferrario Winery), and Del Valle (location of U. S. Veteran's Hospital, Del Valle Farm, Cresta Blanca Winery, and Arroyo Del Valle Sanatorium).

Item 45
Regular Route
Commodity A
Condition 10
Source: MC 78786
Sub 4

Between San Jose, Calif., and Hollister, Calif.:

From San Jose over U. S. Highway 101 to junction California Highway 25, and thence over California Highway 25 to Hollister, and return over the same route.

From San Jose over U. S. Highway 101 to junction unnumbered highway south of Sargeant, Calif., thence over unnumbered highway to junction California Highway 156, thence over California Highway 156 to Hollister, Calif., and return over the same route.

1491

Service is authorized to and from all intermediate points which are stations on the line of the Southern Pacific Company.

Item 46
Regular Route
Commodity T
Condition 27
Source: MC 78786 Sub 129

Between Hollister, Calif., and Tres Pinos, Calif.:
From Hollister over California Highway 25 to Tres Pinos, and return over the same route.
Service is not authorized to or from intermediate points.

Item 47
Regular Route
Commodity T
Termini Subject to Condition 3.
Intermediate and off-route points authorized are subject to Conditions indicated.
Source: MC 78786, MC 78786 Sub 66, MC 78786 Sub 95, MC 78786 Sub 103

Between points and places in California:
From Mayfield over U. S. Highway 101 to San Jose;
From Junction U. S. Highway 101 and unnumbered highway over unnumbered highway to Los Altos;
From Los Altos over unnumbered highway to Santa Clara;
From San Jose over California Highway 17 to Santa Cruz;
From Sunnyvale over California Highway 9 to Saratoga, thence over unnumbered highway to Los Gatos;
From Cupertino over Stevens Creek Road to junction California Highway 17;
From Santa Clara over unnumbered highway via Campbell, to Los Gatos;
From Santa Cruz over California Highway 9 to Boulder Creek;
From Felton over unnumbered highway to junction California Highway 17;
From Santa Cruz over California Highway 1 to Monterey;
From Castroville over unnumbered highway to Salinas;
From Salinas over unnumbered highway, via Del Monte, to Monterey;
From Monterey over unnumbered highway to Pacific Grove;
From Soquel over unnumbered highway via Capitola, to Santa Cruz;
From Le Franc over unnumbered highway to junction California Highway 17;
From Campbell over unnumbered highway to Saratoga;

From Campbell over unnumbered highway to junction California Highway 17; and

1492 Return over these routes to the above specified origin points.

Service is authorized to and from the Watsonville, Calif., U. S. Naval Airport, and Moss Landing, Calif., as intermediate points, subject to Condition 12; and to and from Spreckels, Calif., and points and places within one mile of Spreckels as off-route points, subject to Condition 6.

Service is authorized to and from the non-rail intermediate and off-route points of Saratoga, Le Franc, Cupertino, Holy City, Soquel, Felton, and Boulder Creek, and those on California Highway 9 between Felton and Boulder Creek, subject to Condition 3.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular routes, subject to Condition 3.

Item 48
Regular Route
Commodity T
Condition 11
Source: MC 78786 Sub 44

From Monta Vista, Calif., to Permanente, Calif.:

From Monta Vista over Permanente Road to junction unnumbered highway, thence over unnumbered highway to Permanente; and

Return, with no transportation for compensation except as otherwise authorized.

Service is not authorized to or from intermediate points.

Item 49
Regular Route
Commodity A
Source: 78786 Sub 138
By MC-F-2191

Between San Francisco, Calif., and San Jose, Calif.:

From San Francisco over U. S. Highway 101 to San Jose (also from San Francisco over U. S. Highway 101 By-Pass to San Jose—with use of all highways serving as connecting links between the highways specified), and return over the same routes.

Between San Jose, Calif., and Los Gatos, Calif.:

From San Jose over California Highway 17 to Los Gatos (also from San Jose over unnumbered highway via Robertsville, Calif., to Los Gatos), and return over the some routes.

Between junction unnumbered highway and U. S. Highway 101 and San Jose, Calif.:

From junction unnumbered highway and U. S. Highway 101 at a point near Palo Alto, Calif., over unnumbered highway via Los Altos, Calif., to junction California Highway 9 at a point near Cupertino, Calif., thence over California Highway 9 to Cupertino, Calif., and thence over unnumbered highway via Meridan, Calif., to San Jose, and return over the same route.

1493 Between Sunnyvale, Calif., and Los Gatos, Calif.

From Sunnyvale over California Highway 9 to Saratoga, Calif., thence over unnumbered highway to Los Gatos, and return over the same route.

Service is authorized to and from the intermediate and off-route points of Daly City, Holy Cross, Baden, South San Francisco, Colma, San Bruno, Lomita Park, Millbrae, Broadway, Burlingame, San Mateo, Beresford, Belmont, Belmonte Country Club, San Carlos, Redwood City, Atherton, Menlo Park, Mayfield, Stanford University, Palo Alto, Los Altos, Mountain View, Cupertino, Sunnyvale, Saratoga, Meridan, Santa Clara, Permanente, and Robertsville, Calif.

Item 50
Regular Route
Commodity U
Source: MC 78786

Between Cupertino, Calif., and Permanente, Calif.:

From Cupertino over unnumbered highway and Permanente Road to

Sub 138
By MC-F-2191

Permanente, and return over the same route.
Service is authorized to and from all intermediate points.

Item 51
Regular Route
Commodity I
Condition 11
Source: MC 78786
Sub 44

From Permanente, Calif., to Monta Vista, Calif.:
From Permanente over unnumbered highway to junction Permanente Road, and thence over Permanente Road to Monta Vista; and
Return, with no transportation for compensation except as otherwise authorized.
Service is not authorized to or from intermediate points.

Item 52
Regular Route
Commodity T
Condition 6
Source: MC 78786
Sub 55

Between Watsonville, Calif., and Camp McQuaide, Calif., as follows:
From Watsonville over Wall Street to junction Palm Beach Road, thence over Palm Beach Road to junction unnumbered highway, thence over unnumbered highway to Camp McQuaide;
From Watsonville over unnumbered county highway via a point just south of the Southern Pacific Railway Station at Ellicott, Calif., to Camp McQuaide; and
Return over the same routes to Watsonville.
Service is not authorized to or from intermediate points.

Item 53
Irregular Route
Commodity T
Condition 6
Source: MC 78786
Sub 101

Between Salinas, Calif., and Natividad, Calif.

1494

Item 54
Regular Route
Commodity J
Condition 5
Source: MC 78786
Sub 48

Between Salinas, Calif., and the Richardson Gate of Fort Ord, Calif.:
From Salinas over California Highway 117 to junction unnumbered highway, thence over unnumbered highway to the Richardson Gate,

Fort Ord, and return over the same route.

Between Marina, Calif., and the Marina Gate of Fort Ord, Calif.:

From Marina over unnumbered highway, known as the Marina-Fort Ord Road, to the Marina Gate, Fort Ord, and return over the same route.

Between Monterey, Calif., and the Gigling Gate of Fort Ord, Calif.:

From Monterey over California Highway 1 to junction unnumbered highway, thence over unnumbered highway to Gigling Gate, Fort Ord, and return over the same route.

Between Gigling, Calif., and the Gigling Gate of Fort Ord, Calif.:

From Gigling over California Highway 1 to junction unnumbered highway, thence over unnumbered highway to Gigling Gate, Fort Ord, and return over the same route.

Service is not authorized to or from intermediate points on the above-specified routes.

Item 55
Regular Route
Commodity A
Condition 13
Source: MC 78786
Sub 83

Between Salinas, Calif., and King City, Calif.:

From Salinas over U. S. Highway 101 to King City, and return over the same route.

Service is authorized to and from all intermediate points.

Item 56
Irregular Route
Commodity Q
Condition 6
Source: MC 78786
Sub 60

Between Salinas, Calif., and Salinas Airport, Calif.

Item 57
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between San Luis Obispo, Calif., and Metz, Calif.:

From San Luis Obispo over U. S. Highway 101 to King City, thence over unnumbered highway via Coburn to Metz, and return over the same route.

Service is authorized to and from all on-rail intermediate points, on, and all on-rail off-route points within two miles of, the above-specified regular route.

1495 *Item 58*
Regular Route
Commodity T
Condition 6
Source: MC 78786 Sub 57

Between King City, Bradley, San Lucas, and San Ardo, Calif., and Jolon, Calif., and Hunter Liggett Military Reservation (formerly known as Jolon Training Center), Calif.:

From King City, southwesterly, over U. S. Highway 101 to junction unnumbered highway, thence southerly over unnumbered highways to Jolon and Hunter Liggett Military Reservation;

From San Lucas over U. S. Highway 101 to junction unnumbered highway near San Lucas, thence southwesterly over unnumbered highway to Jolon and Hunter Liggett Military Reservation;

From San Ardo over U. S. Highway 101 to junction unnumbered highway near San Ardo, thence over unnumbered highways via Lockwood, to Jolon and Hunter Liggett Military Reservation;

From Bradley over U. S. Highway 101 to junction unnumbered highway near Bradley, thence over unnumbered highways via Lockwood to Jolon and Hunter Liggett Military Reservation; and

Return over these routes to King City, Bradley, San Lucas and San Ardo.

Service is not authorized to or from intermediate points.

Item 59
Irregular Route
Commodity Q
Condition 6
Source: MC 78786 Sub 59

Between Paso Robles and Paso Robles Airport, Calif.

Item 60
Regular Route
Commodity T
Condition 6
Source: MC 78786 Sub 56

Between San Luis Obispo, Calif., and Camp San Luis Obispo, Calif.:

From San Luis Obispo over California Highway 1 to Camp San Luis Obispo, and return over the same route.

Between San Miguel, Calif., and Camp Nacimiento:

From San Miguel over unnumbered California Highway to Camp Nacimiento, and return over the same route.

Service is not authorized to or from intermediate points.

Item 61
Irregular Route
Commodity O
Condition 6
Source: MC 78786 Sub 74

Between San Luis Obispo, Casmalia, Tangair, Surf and Lompoc, Calif., on the one hand, and, on the other, Camp Cooke, (formerly known as Burton Mesa Army Cantonment), Calif.

1496 *Item 62*
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between San Luis Obispo, Calif., and Pismo Beach, Calif.:

From San Luis Obispo over U. S. Highway 101 to Pismo Beach, thence over California Highway 1 via Oceano, to junction unnumbered highway, thence over unnumbered highway to Arroyo Grande, thence over U. S. Highway 101 to Pismo Beach, and thence over unnumbered highway via Edna, to San Luis Obispo.

Service is not authorized to or from the intermediate point of Arroyo Grande, in connection with this operation.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular route.

Between Surf, Calif., and White Hills, Calif.:

From Surf over California Highway 150 to Lompoc, thence over unnumbered highway to White Hills, and return over the same route.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of the above-specified regular route.

Item 63
Irregular Route
Commodity T
Condition 3
Source: MC 78786

Between Santa Barbara and Montecito, Calif.

Item 64
Regular Route
Commodity P
Condition 6
Source: MC 78786 Sub 68

Between Santa Barbara, Calif., and Goleta, Calif.:
From Santa Barbara over U. S. Highway 101 to Goleta, and return over the same route.
Service is not authorized to or from intermediate points.

Item 65
Regular Route
Commodity A
Condition 10
Source: MC 78786 Sub 4

Between Ventura, Calif., and Ojai, Calif.:
From Ventura over U. S. Highway 399 to junction California Highway 150, and thence over California Highway 150 to Ojai, and return over the same route.
Between Ventura, Calif., and Santa Paula, Calif.:
From Ventura over U. S. Highway 101 to junction California Highway 126, and thence over California Highway 126 to Santa Paula, and return over the same route.
Between Ventura, Calif., and Oxnard, Calif.:
From Ventura over U. S. Highway 101 to junction U. S. Highway 101-A, and thence over U. S. Highway 101-A to Oxnard, and return over the same route.

Between Oxnard, Calif., and junction Wells Road and California Highway 126:
From Oxnard over U. S. Highway 101-A to junction Vineyard Avenue, thence over Vineyard Avenue to junc-

tion California Highway 118, thence over California Highway 118, through Saticoy, Calif., to junction Wells Road, and thence over Wells Road to junction California Highway 126, and return over the same route.

Service is authorized to and from all intermediate and off-route points within three miles of the above-described routes, which are stations on the line of the Southern Pacific Company.

Item 65-A#
Regular Route
Commodity T
Condition 15
Source: MC 78786 Sub 150

Between Ojai, Calif., and Santa Paula,
From Ojai over California Highway 150 to Santa Paula, and return over the same route.
Service is not authorized to or from intermediate points.

Item 66
Regular Route
Commodity T
Condition 14
Source: MC 78786

Between points and places in California:
From Tracy over U. S. Highway 50 via Stockton to Sacramento;
From Lodi over California Highway 12 to junction unnumbered highway, thence over unnumbered highway via Woodbridge to Galt;
From junction U. S. Highway 50 and unnumbered highway over unnumbered highway via Elk Grove and Florin, to junction U. S. Highway 50 west of Florin;
From Lodi over California Highway 12 to junction California Highway 88; and
Return over these routes to the above-specified origin points.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above specified regular routes.

Item 67
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between Stockton, Calif., and Martel, Calif.:
From Stockton over unnumbered highway via Waterloo to junction California Highway 12, thence over California Highway 12 to Clements, and thence over California Highway 88 via Ione to Martel, and return over the same route.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular route.

1498 *Item 68*
Regular Route
Commodity F
Source: MC 78786

Between Jackson, Calif., and Amador City, Calif.:
From Jackson over California Highway 49 to Amador City, and return over the same route.
Service is authorized to and from all intermediate points; and off-route points within one mile of the above-specified route.

Item 69
Regular Route
Commodity Q
Condition 15
Source: MC 78786 Sub 61

Between Clements, Calif., and Valley Spring, Calif.:
From Clements over California Highway 12 to Valley Spring, and return over the same route.
Service is authorized to and from the intermediate points of Wallace and Helisma, Calif.

Item 70
Irregular Route
Commodity T
Condition 3
Source: MC 78786

Between all on-rail points in that part of Kern, Kings, Tulare, Fresno, Madera, Merced, Stanislaus and San Joaquin Counties, Calif., north of a line extending east and west through Famoso, west of a line 25 miles east of, and parallel to, U. S. Highway 99, and on and south of a line extending from the eastern boundary of San Joaquin County in a southwesterly direction through Farmington and Manteca, Calif., to Tracy, Calif., and west from Tracy to the western boundary of San Joaquin County.

Item 71
Irregular Route
Commodity O
Condition 6
Source: MC 78786 Sub 76

Lemoore Airport, Calif.:
Service is authorized to and from the site of Lemoore Airport, Calif., in connection with Item 70.

Item 72
Regular Route
Commodity T
Condition 3
Source: MC 78786 Sub 125

Between points and places in California.:
From the junction of U. S. Highway 50 and California Highway 120 over California Highway 120 to Manteca;
From Manteca over U. S. Highway 99 to Stockton;
From Farmington over California Highway 4 to junction U. S. Highway 99;
From a point east of Collegeville on the northern boundary of the irregular route territory described above under Item 70 over an unnumbered highway via Collegeville to its junction with U. S. Highway 99; and
Return over the same routes to the above-specified origin points.
Service is not authorized to or from intermediate points.

1499 *Item 73*
Irregular Route
Commodity T
Condition 16
Source: MC 78786 Sub 127

Between Raisin City and Caruthers, Calif., on the one hand, and, on the other, points and places in Fresno County, Calif., on the lines of the Southern Pacific Company or its subsidiaries.

Item 74
Regular Route
Commodity T
Condition 3
Source: MC 78786 and MC 78786 Sub 65.

Between points and places in California:
From Bakersfield over unnumbered highway via Oil Center, to Oildale, thence over unnumbered highway to junction U. S. Highway 99, and thence over U. S. Highway 99 to Bakersfield;
From Bakersfield over California Highway 178 via Rio Bravo, to McKittrick, thence over California

Highway 33 to Taft, thence over U. S. Highway 399 to Maricopa, thence return over U. S. Highway 399 via Panama to junction U. S. Highway 99; serving Gardner Field, (formerly known as Taft Airport) as an off-route point;

From Panama over unnumbered highway via Gosford, to Bakersfield;

From Rio Bravo over unnumbered highway via Stevens, to Gosford;

From Buttonwillow over unnumbered highway to Ford City;

From Old River over unnumbered highway to Connor;

From McKittrick over unnumbered highway to Olig;

From Bakersfield over U. S. Highway 99 to junction unnumbered highway, thence over unnumbered highway via Weedpatch, to Arvin;

From Arvin over unnumbered highway to junction U. S. Highway 466, east of Edison, and thence over U. S. Highway 466 to Bakersfield;

From Weedpatch over unnumbered highway to junction U. S. Highway 466, west of Edison; and

Return over the above-specified routes to the above-specified origin points.

Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified regular routes.

Item 75
Regular Route
Commodity T
Condition 17
Source: MC 78786 Sub 63

Between Bakersfield, Calif., and Minter Field, (formerly known as Lerdo Airport), Calif.:

From Bakersfield over U. S. Highway 99 to junction Lerdo Road, thence over Lerdo Road to Minter Field, and return over the same route.

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Service is authorized to and from the intermediate point of Lerdo, and intermediate and off-route points within one mile of the Lerdo rail station and all intermediate points on Lerdo Road within two and one-half miles of Lerdo.

Item 76
Regular Route
Commodity K
Source: MC 78786
MC 78786 Sub 126

Between Lone Pine, Calif., and Laws, Calif.:

From Lone Pine Station over unnumbered highway to Lone Pine, thence over U. S. Highway 395 to Bishop, and thence over California Highway 168 to Laws, and return over the same route.

Service is authorized to and from all intermediate points, and all on-rail off-route points within five miles of the above-specified route.

Item 77
Regular Route
Commodity T
Source: MC 78786
Sub 32

Between Laws, Calif., and Benton, Calif.:

From Laws over U. S. Highway 6 to junction California Highway 120, thence over California Highway 120 to Benton, and return over the same route.

Service is authorized to and from all intermediate points and as off-route points all stations on the Southern Pacific Company rail line between Laws and Benton Station, Calif.

Item 78
Regular Route
Commodity T
Source: MC 78786
Sub 54

Between Bishop, Calif., and Scheelite, Calif.:

From Bishop over U. S. Highway 395 to junction unnumbered highway, thence over unnumbered highway to Scheelite, and return over the same route.

Service is authorized to and from all intermediate points; and off-route points west of U. S. Highway 395 within six miles of Scheelite.

Item 79
Regular Route
Commodity T
Condition 18
Source: MC 78786 Sub 49

Between Lone Pine, Calif., and Mojave, Calif.:
From Lone Pine over U. S. Highway 6 to Mojave;
From Lone Pine over U. S. Highway 395 to junction unnumbered highway near Searles, Calif., thence over unnumbered highway to junction U. S. Highway 6, and thence over U. S. Highway 6 to Mojave;
From Lone Pine over U. S. Highway 395 to Inyokern, Calif., thence over California Highway 178 to junction U. S. Highway 6, and thence over U. S. Highway 6 to Mojave; and
Return over these routes to Lone Pine.

1501

Service is authorized to and from intermediate and off-route points as follows: Rail stations, and places within one mile of rail stations, located on the line of the Southern Pacific Company.

Item 80
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between Saugus, Calif., and Paris and Mojave, Calif.:
From Saugus over unnumbered highway to junction U. S. Highway 6, thence over U. S. Highway 6 to Paris;
From Saugus over unnumbered highway to junction U. S. Highway 6, thence over U. S. Highway 6 to junction unnumbered highway, thence over unnumbered Highway via Lang, Ravenna and Acton, to junction U. S. Highway 6 at Paris, and thence over U. S. Highway 6 Mojave; and
Return over these routes.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-rail points within two miles of, the above-specified regular routes.

Item 81 Irregular Route Commodity T Condition 3 Source: MC 78786	Between Los Angeles, Calif., on the one hand, and, on the other, Alhambra, Burbank, and Glendale, Calif.
Item 82 Irregular Route Commodity L Source: MC 78786	Between Los Angeles, Wilmington, Terminal Island, San Pedro, Compton, Vernon, Bell, Huntington Park, and Maywood, Calif.
Item 83 Irregular Route Commodity A Condition 10 Source: MC 78786 Sub 4	Between Los Angeles, Calif., on the one hand, and on the other, Long Beach, Calif. Between Los Angeles, Calif., on the one hand, and, on the other, Inglewood, El Segundo, Redondo Beach, Hermosa Beach, Manhattan Beach, Torrance, and Gardena, Calif. Between Los Angeles, Calif., on the one hand and on the other, Pasadena, South Pasadena, and San Marino, Calif.
Item 83-A# Irregular Route Commodity T Condition 20 Source: MC 78786 Sub 137	Between Los Angeles, Calif., and San Gabriel, Calif.
Item 84 Irregular Route Commodity T Condition 3 Source: MC 78786	Between West Hollywood and Beverly Hills, Calif.
1502 *Item 85* Regular Route Commodity M Source: MC 78786 Sub 92	Between Colton, Calif., and Los Angeles, Calif.: From Colton over U. S. Highway 99 to Los Angeles, and return over the same route. Service is authorized to and from all intermediate and off-route points on the above-specified route, which are stations on the line of the Southern Pacific Company.

Item 86 Irregular Route Commodity T Condition 20 Source: MC 78786 Sub 133	Between Pomona, Calif., and Spadra, Calif.
Item 87 Irregular Route Commodity A Condition 10 Source: MC 78786 Sub 4	Between El Monte, Rosemead, Bassett, Puente, Irwindale, Baldwin Park, and Al Barnes, Calif.
Item 88 Irregular Route Commodity T Condition 19 Source: MC 78786 Sub 30	Between Santa Ana, Orange, Anaheim, Fullerton, La Habra, Brea, Yorba Linda, Tustin, and Dyer, Calif.
Item 89 Irregular Route Commodity O Condition 20 Source: MC 78786 Sub 79	Between Santa Ana, Calif., on the one hand and, on the other, the United States Army Air Corps Replacement Center, approximately six miles southwest of Santa Ana.
Item 90 Regular Route Commodity T Condition 3 Source: MC 78786	Between Ontario, Calif., and Upland, Guasti, and Chino, Calif.: From Ontario over Euclid Avenue to Upland; From Ontario over U. S. Highway 99 to Guasti; From Ontario over U. S. Highway 99 to junction Central Avenue, and thence over Central Avenue to Chino; From Ontario over Euclid Avenue to junction Riverside Avenue, thence over Riverside Avenue to junction Central Avenue, and thence over Central Avenue to Chino; and Return over the same routes to Ontario. Service is authorized to and from all on-rail intermediate points.

Item 91
Irregular Route
Commodity T
Condition 30
Source: MC 78786
Sub 136
1503

Between Monrovia, Arcadia, and Sierra Madre, Calif.

Item 92
Irregular Route
Commodity T
Condition 3
Source: MC 78786

Between San Bernardino, Colton, Riverside, Corona, Highlands, Crafton, Redlands, Patton, Crown Jewel, Sunkist, Bryn Mawr, Loma Linda, Arlington, Highgrove, Bloomington, and Rialto, Calif.

Item 93
Irregular Route
Commodity T
Condition 21
Source: MC 78786
Sub 97

Between San Bernardino, Calif., on the one hand, and, on the other, the San Bernardino U. S. Army Air Corps Maintenance and Supply Depot.

Item 93-A#
Irregular Route
Commodity Y
Condition 12
Source: MC 78786
Sub 149

Between Colton, Calif., on the one hand, and, on the other, Kaiser, Calif., and points and places within two miles of Kaiser.

Item 94
Regular Route
Commodity A
Condition 22
Source MC 78786
Sub 4

Between Colton, Calif., and Niland, Calif.:

From Colton over U. S. Highway 99 to Coachella, Calif., and thence over California Highway 111 to Niland, and return over the same route.

Service is authorized to and from all intermediate points and off-route points within three miles of the above described route, which are stations on the line of the Southern Pacific Company.

Item 94-A#
Irregular Route
Commodity T
Condition 33
Source: MC 78786
Sub 141

Between San Diego, National City, Chula Vista, Palm City, San Ysidro, Lemon Grove, La Mesa, Grossmont, and El Cajon, Calif.

Item 95
Regular Route
Commodity T
Condition 3
Source: MC 78786

Between Brawley, Calif., and Westmoreland, Calif.:
From Brawley over U. S. Highway 99 to Westmoreland, and return over the same route.
Service is authorized to and from all on-rail intermediate points on, and all on-rail off-route points within two miles of, the above-specified route.

Item 96
Regular Route
Commodity A
Condition 22
Source: MC 78786
Sub 4

Between Yuma, Ariz., and Niland, Calif.:
From Yuma over U. S. Highway 80 to El Centro, Calif., (also from Yuma over U. S. Highway 80 to junction California Highway 98, thence over California Highway 98 to Calexico, Calif., and thence over U. S. Highway 99 to El Centro) thence over U. S. Highway 99 to Brawley, Calif., and thence over California Highway 111 to Niland, and return over the same route.
Service is authorized to and from all intermediate points and off-route points within ten miles of the above-described routes between Calexico and Niland, which are stations on the line of the Southern Pacific Company.

1504

Item 97#
Regular Route
Commodity A
Condition 24
Source: MC 78786
Sub 4, MC 78786
Sub 40, MC 78786
Sub 120

Between Yuma, Ariz., and Phoenix Ariz.
From Yuma over U. S. Highway 80 to Phoenix, and return over the same route.
Service is authorized to and from all intermediate points, and the off-route points of Roll, Tolleson, Jean, and Fowler, Ariz.
Between Phoenix Ariz., and Nogales, Ariz.:

From Phoenix over U. S. Highway 89 to Nogales, and return over the same route.

Service is authorized to and from the intermediate point of Florence, Ariz., and those between Florence and Nogales.

Between Phoenix, Ariz., and Tucson, Ariz.:

From Phoenix over U. S. Highway 80 to Mesa, Ariz., thence over Arizona Highway 87 to Chandler, Ariz., (also over unnumbered highway from Phoenix to Chandler), and thence over Arizona Highway 87 to junction Arizona Highway 84, and thence over Arizona Highway 84 to Tucson, and return over these routes.

Service is authorized to and from all intermediate points, except those on the unnumbered highway between Phoenix and Chandler, and except that service to and from all intermediate points between Phoenix and Chandler on U. S. Highway 80 and Arizona Highway 87, including Chandler, is subject to Condition 15.

Between Picacho, Ariz., and Globe, Ariz.:

From Picacho over Arizona Highway 84 to Casa Grande, Ariz., thence over Arizona Highway 187 to junction Arizona Highway 87, (also over unnumbered highway from Casa Grande to junction thereof with Arizona Highway 87), thence over Arizona Highway 87 to junction Arizona Highway 287, thence over Arizona Highway 287 to Florence, Ariz., thence over U. S. Highway 80 to Florence Junction, Ariz., and thence over U. S. Highway 70 to Globe, and return over these routes.

Service is authorized to and from all intermediate points.

Between Tucson, Ariz., and Safford, Ariz.:

From Tucson over U. S. Highway 80 to Benson, Ariz., thence over Arizona Highway 86, to its junction with U. S. Highway 666, thence over U. S. Highway 666 to Safford, and return over the same route.

1505 Service is authorized to and from all intermediate points except those on Arizona Highway 86 between its junction with U. S. Highway 666 and its junction with unnumbered highway west of Dragoon, Ariz. Service is authorized to and from the off-route points of Bowie, Dragoon and Cochise, Ariz.

Item 98
Irregular Route
Commodity A
Condition 24
Source: MC 78786 Sub 40

Between points and places within 25 miles of Coolidge, Ariz., and Casa Grande, Ariz., including Coolidge and Casa Grande.

Item 99
Regular Route
Commodity A
Condition 28
Source: MC 78786 Sub 4

Between Casa Grande, Ariz., and Gila Bend, Ariz.:

From Casa Grande over Arizona Highway 84 to Gila Bend, and return over the same route.

Service is not authorized to or from intermediate points.

Between the junction U. S. Highway 666 and Arizona Highway 86 and San Simon, Ariz.:

From the junction of U. S. Highway 666 and Arizona Highway 86 over Arizona Highway 86 to San Simon, and return over the same route.

Service is authorized to and from all intermediate points, which are stations on the line of the Southern Pacific Company.

Item 100
Regular Route
Commodity P
Condition 6

Between Fairbank, Ariz., and Douglas, Ariz.:

From Fairbank over Arizona Highway 82 to junction U. S. Highway 80,

Source: MC 78786 Sub 82	thence over U. S. Highway 80 to Douglas, and return over the same route. Service is authorized to and from all intermediate and off-route points on the rail line of the Southern Pacific Company, including Garden Canyon and Ft. Huachuca, Ariz.
Item 101 Irregular Route Commodity P Condition 6 Source: MC 78786 Sub 82	Between Fairbank, Douglas, Lewis Springs, and Ft. Huachuca, Ariz., and points and places on the rail lines of the Southern Pacific Company intermediate to such points.
Item 102 Regular Route Commodity R Condition 2 Source: MC 78786 Sub 90 By MC-F-1457	Between El Paso, Tex., and Glenbar, Ariz.: From El Paso, over U. S. Highway 80 to Las Cruces, N. Mex., and thence over U. S. Highway 70 to Glenbar, and return over the same route. Service is authorized to and from all intermediate points; and the off-route points of Clifton, Morenci and Metcalf, Ariz.
1506 *Item 103* Irregular Route Commodity T Condition 29 Source: MC 78786 Sub 131	Between El Paso, Texas, on the one hand, and, on the other, Fort Bliss and Planeport, Texas.
Item 104# Regular Route Commodity A Condition 10 Source: MC 78786 Sub 4, as modified By MC-F-2073, decided March 27, 1945.	Between Fernley, Nev., and Winnemucca, Nev.: From Fernley over U. S. Highway 40 to Winnemucca, and return over the same route. Service is authorized to and from all intermediate points, and to and from the off-route points which are within ten miles of the above-specified route, which are stations on the line of the Southern Pacific Company.

Item 105
Regular Route
Commodity N
Source: MC 78786
Sub 12

Between Winnemucca, Nev., and Elko, Nev.:
From Winnemucca over U. S. Highway 40 to Elko, and return over the same route.
Service is authorized to and from all on-rail intermediate points and all on-rail off-route points within ten miles of the above-specified route.

Item 106
Regular Route
Commodity T
Condition 23
Source: MC 78786
Sub 38

Between Elko, Nev., and Wells, Nev.:
From Elko over U. S. Highway 40 to Wells, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route points of Cain, Osino, Ryndon, Elburz, Halleck, Rasid, Natchez, Deeth, Nardi, Fulasco, and Alazon, Nev.

Item 107#
Regular Route
Commodity T
Condition 6
Source: MC 78786
Sub 84, as modified
By MC-F-2073,
decided March 27,
1945.

Between Hawthorne, Nev., and Mina, Nev.:
From Hawthorne over U. S. Highway 95 to Mina, and return over the same route.
Service is authorized to and from the U. S. Naval Ammunition Depot near Hawthorne, and the intermediate and off-route points within five miles of the highway specified which are stations on the rail line of the Southern Pacific Company.

Item 108#
Regular Route
Commodity V
Condition 32
Source: MC 936
By: MC-F-2073
decided March 27,
1945.

Between Reno, Nev., and Hawthorne, Nev.:
From Reno over U. S. Highway 40 to Fernley, Nev., thence over U. S. Highway 95 to Hawthorne, and return over the same route.
Service is authorized to and from all intermediate points.

The repetition of route description with respect to the highways over which operations are authorized herein is not to be construed as granting more than one operating right over said highways.

1507 *Commodity Specifications* hereinbefore referred to by symbol indicated:

A *General commodities,* except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading.

B *Milk and cream and products thereof.*

C *Farm and Dairy supplies.*

D *General commodities,* except liquids, in bulk, in tank trucks, and livestock other than individually crated animals.

E *Milk, cream,* and *personal baggage,* and *general commodities* which are at the time in the primary custody of, and moving on the bills of lading of, a railway express Company.

F *General commodities,* except bulk liquids, and except lumber in shipments of more than 10,000 pounds, assembled automobiles, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, and dangerous explosives, livestock and heavy machinery when transported in special equipment.

G *Fresh pears.*

H *General Commodities,* except wine in bulk, in tank trucks and wine in containers.

I *Cement, lime* and *rock.*

J *General commodities,* except liquids in bulk, in tank trucks, and livestock.

K *General commodities,* except bulk liquids, and except assembled automobiles, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, dangerous explosives, livestock, and heavy machinery, when transported in special equipment.

L *General commodities;* except bulk liquids, and except lumber in shipments of more than 10,000 pounds, assembled automobiles, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, and dangerous explosives and livestock, when transported in special equipment.

M *General commodities,* which are at the time in the primary custody of, and moving on bills of lading of, a railway express agency, and mail and baggage.

N *General commodities,* except commodities in bulk, including bulk liquids, livestock, heavy machinery required special equipment for handling, and uncrated household goods.

O *General commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

1508

P *General commodities,* except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

Q *General commodities,* except those of unusual value, and except dangerous explosives, livestock, household goods, as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

R *General commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, liquid commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

S *General commodities,* except milk and cream and the products thereof, and farm and dairy supplies.

T *General commodities.*

U *General commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467.

V # *General commodities,* except petroleum products in bulk, uncrated livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities of ususual value, commodities requiring special equipment, and those injurious or contaminating to other lading.

W # *Mining supplies.*
X # *Concentrates.*
Y # *General commodities,* except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467,
Z # *General commodities,* except milk, cream, personal baggage, and commodities which are at the time in the primary custody of, and moving on bills of lading of, a railway express company.

Special conditions hereinbefore referred to by number indicated:

1 The authority granted shall be subject to such further limitations, restrictions or modifications as the Commission may find it necessary to impose, in order to insure that the service shall be auxiliary or supplementary to train service of the Southern Pacific Company and shall not unduly restrain competition.

* * * * *

2 Service shall not be rendered from or to, or traffic interchanged at, any point which is not a station on the lines of the Southern Pacific Company, if such point is more than ten miles by highway from such a station.

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3 The service to be performed by the said carrier shall be limited to that which is auxiliary to, or supplemental of, railroad or railway express service;

The said carrier shall not serve any point not a station on a railroad, except as otherwise authorized;

All contractual arrangements between the said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary, shall be reported to this Commission and shall be subject to revision if and as this Commission may find it necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further conditions as the Commission, in the future, may find it necessary to impose in order to restrict the said carrier's operation to service which is auxiliary to, or supplemental of, railroad or railway express company service.

* * * * *

4 Service authorized is subject to the following conditions applicable only to that portion of the routes north of junction of U. S. Highway 97 and Oregon Highway 62, near Fort Klamath, Oreg., and south of Eugene, Oreg.:

The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company:

All contractual arrangements between said carrier and said railroad shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further special conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of said railroad.

• • • • •

5 The service to be performed by the said carrier shall be limited to that which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company;

Shipments transported by said carrier shall be limited to those which it receives from or delivers to the Southern Pacific Company under a through bill of lading covering, in addition to the movement by said carrier, a prior or subsequent movement by rail; and

Such further specific conditions as the Commission may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company.

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6 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company;

All contractual arrangements between said carrier and the railroad shall be reported to the Commission and shall be subject to revision, if and as the

Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties; and

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to or supplemental of, the rail service of the Southern Pacific Company.

• • • • •

7 The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company or the Sacramento Northern Railway, hereinafter called the railroads;

All contractual arrangements between said carrier and the railroads shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further specific conditions as the Commission, in the future may find it necessary to impose in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service.

• • • • •

8 The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, service by rail;

Said carrier shall not serve any point not a station on the Northwestern Pacific Railroad;

Shipments transported by said carrier shall be limited to those moving on a through bill of lading or express receipt covering, in addition to a motor vehicle movement, an immediately prior or immediately subsequent movement by rail; and

Such further specific conditions as the Commission, in the future may find it necessary to impose in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service.

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9 The authority granted shall be subject to such limitations or restrictions as we may hereafter find it necessary to impose to insure that the service shall

be auxiliary or supplementary to train service of Northwestern Pacific Railroad Company, and shall not unduly restrict competition.

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10 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service;

Said carrier shall not serve any point not a station on a railroad;

Shipments transported by said carrier shall be limited to those which, in addition to the movement by said carrier, receive an immediately prior or an immediately subsequent movement by rail;

All contractual arrangements between said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary shall be reported to this Commission and shall be subject to revision if and as we may find it necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further restrictions as this Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

* * * * *

11 The service performed by the above-named carrier shall be limited to that which is auxiliary to, or supplemental of, railroad or railway express service.

Shipments transported shall be limited to those which are received from or delivered to a rail carrier and which receive a prior or a subsequent rail haul, and, shall move on through bills of lading covering in addition to the movement by said carrier the prior or subsequent rail haul.

All contractual arrangements between said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary shall be reported to the Commission and shall be subject to revision by it if and as it may be found necessary in order that such arrangement shall be fair and equitable to the parties.

Such further conditions as the Commission, in the future, may find it necessary to impose to restrict said carrier's operation to service which is auxiliary to, or supplemental of, railroad or railway express company service.

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12 The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company, hereinafter called the railroad;

Shipments to be transported by said carrier shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering in addition to movement by said carrier, a prior or subsequent movement by rail;

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All contractual arrangements between said carrier and the railroad shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the railroad.

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13 The authority granted permits service to be performed only when motor carrier service is substituted for rail service, and does not permit service entirely by motor vehicle where no line-haul rail service is performed.

• • • • •

14 The service to be performed by the said carrier shall be limited to that which is auxiliary to, or supplemental of, railroad or railway express service;

The said carrier shall not serve any point not a station on a railroad, except as otherwise authorized.

Said carrier shall not transport shipments between Sacramento and Stockton or through or to or from more than one of such points.

All contractual arrangements between the said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary, shall be reported to this Commission and shall be subject to revision if and as this Commission may find it necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further conditions as the Commission in the future, may find it necessary to impose in order to restrict the said carrier's operation to service which is auxiliary to, or supplemental of, railroad or railway express company service.

* * * * *

15 The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company, hereinafter called the railroad.

Said carrier shall not serve any point not a station on the rail line of the railroad.

All contractual agreements between said carrier and the railroad shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

Such further special conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the railroad.

* * * * *

1513

16 Service to be performed by the said carrier shall be limited to that which is auxiliary to or supplemental of railroad or railway express service;

All contractual arrangements between said carrier and any railroad or railway express carrier to whose service its service is auxiliary or supplementary shall be reported to this Commission and shall be subject to revision if and as the Commission may find it necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, railroad or railway express company service.

• • • • •

17 The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company, or The Atchison, Topeka & Santa Fe Railway Company, hereinafter called the railroads.

All contractual arrangements between said carrier and the railroads shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

Such further special conditions as the Commission, in the future, may find necessary to impose in order to restrict said Carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, rail service.

• • • • •

18 The service to be performed by said carrier shall be limited to that which is auxiliary to or supplemental of the rail service of the Southern Pacific Company;

No service shall be given to or from any place not within one mile of a rail station, nor any traffic interchanged at any point not a station on the rail line of the Southern Pacific Company;

Shipments transported by said carrier by motor vehicle shall be limited to those which carrier receives from or delivers to a rail carrier and which move under a through bill of lading covering, in addition to the movement by motor vehicle, a prior or subsequent movement by rail; and

Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company.

• • • • •

1514

19 The service by motor vehicle to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, the service of the Southern Pacific Company or Pacific Electric Railway Company.

No service shall be given to or from, nor any traffic interchanged at, any point not a station on the rail lines of the Southern Pacific Company or Pacific Electric Railway Company.

Shipments transported by said carrier by motor vehicle shall be limited to those which it receives from, or delivers to, a rail carrier and which move under a through bill of lading covering, in addition to the movement by motor vehicle, a prior or subsequent movement by rail.

Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to rail service of the Southern Pacific Company or Pacific Electric Railway Company or both.

• • • • •

20 The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company or the Pacific Electric Railway Company, hereinafter called the railroads.

All contractual arrangements between said carrier and the railroads shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

• • • • •

21 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company and the Pacific Electric Railway Company, hereinafter called the railroads.

Shipments transported by said carrier shall be limited to those which it receives from or delivers to the railroads under a through bill of lading covering, in addition to a motor carrier movement by said carrier, a prior or subsequent movement by rail.

All contractual arrangements between said carrier and the railroads shall be reported to the Commission and shall be subject to revisions, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find necessary to impose in order to restrict said carriers operation to service which is auxiliary to, or supplemental of, rail service.

1515

22 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service;

Said carrier shall not serve any point not a station on a railroad;

No shipments shall be transported by said carrier between any of the following points; or through, or to, or from more than one of said points: Los Angeles, Colton, Indio, and El Centro, Calif., and Yuma and Phoenix, Ariz.;

All contractual arrangements between said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary shall be reported to this Commission and shall be subject to revision if and as the Commission may find it necessary in order that such arrangements shall be fair and equitable to the parties; and

Such further restrictions as this Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

* * * * *

23 The service performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, railroad or railway express service;

No service shall be given to or from, nor any traffic interchanged at, any point not a station on a railroad;

Shipments transported shall be limited to those which are received from, or delivered to, a rail carrier and which receive a prior or a subsequent rail haul and shall move on through bills of lading covering in addition to the movement by said carrier, the prior or subsequent rail haul;

All contractual arrangements between said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary shall be reported to the Commission and shall be subject to revision by it if and as it may be found necessary in order that such arrangement shall be fair and equitable to the parties; and

Such further conditions, as the Commission, in the future, may find it necessary to impose to restrict said carrier's operation to service which is auxiliary to, or supplemental of, railroad or railway express Company Service.

* * * * *

24 The service authorized shall be restricted to pick-up, delivery and interchange of traffic only at those points specified which are stations on the railroads of the Southern Pacific Company, and shall be subject to such further limitations or restrictions as the Commission may hereafter impose in order to insure that the service shall be auxiliary or supplementary to the train service of said railroad and shall not unduly restrain competition.

* * * * *

1516

25 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service;

Shipments transported by said carrier shall be limited to those moving on a through bill of lading, or express receipt, covering in addition to a motor carrier movement by said carrier, an immediately prior, or immediately subsequent, movement by railroad; and

Such further specific conditions as the Commission, in the future, may find necessary to impose

in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service.

• • • • •

26 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service;
Said carrier shall not serve any point not a station on a railroad;
Shipments transported by said carrier shall be limited to those moving on a through bill of lading, or express receipt, covering in addition to a motor carrier movement by said carrier an immediately prior, or immediately subsequent, movement by railroad; and
Such further specific conditions as the Commission in the future, may find it necessary to impose in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service.

• • • • •

27 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service.

• • • • •

28 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service.
Said carrier shall not serve any point not a station on a railroad.
All contractual arrangements between said carrier and any railroad or railway express carrier by whose services its service is auxiliary or supplementary shall be reported to this Commission and shall be subject to revision if and as we may find it necessary in order that such arrangements shall be fair and equitable to the parties.
Such further restrictions as this Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

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1517

29 The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the Southern Pacific Company and its rail connections.

All contractual arrangements between said carrier and the railroad shall be reported to the Commission and shall be subject to revision if and as the Commission may feel it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict said carrier's operations to the service which is auxiliary to, or supplemental of, rail service.

• • • • •

30 The service to be performed by said carrier shall be limited to that which is auxiliary to or supplemental of the rail service of the Southern Pacific Company or the Pacific Electric Railway Company, hereinafter called the railways;

Said carrier's service shall be limited to the transportation of shipments which it may receive from or deliver to Southern Pacific Company and Pacific Electric Railway Company. All of said shipments shall receive, in addition to the trucking movement furnished by said carrier, a prior or subsequent movement by rail;

All contractual arrangements between said carrier and the railways shall be reported to the Interstate Commerce Commission and shall be subject to revision, if and as found to be necessary, in order that such arrangements may be fair and equitable to the parties; and

Such further condition as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations to service which is auxiliary to or supplemental of rail service.

• • • • •

31 The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service;

Said carrier shall not serve any point not a station of the Southern Pacific Company;

No shipment shall be transported by said carrier between any of the following points; or through, or to, or from more than one of said points, Portland, Klamath Falls, Albany, and Medford, Oreg.;
All contractual arrangements between Pacific Motor Trucking Company and any railroad to whose services its service is auxiliary, or supplementary shall be reported to this Commission and shall be subject to revisions if, and as this Commission may find it necessary in order that such arrangements shall be fair and equitable to the parties; and

1518 Such further conditions or restrictions as this Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service.

• • • • •

32 # The authority granted shall be subject to such specific conditions as we, in the future, may find it necessary to impose in order to restrict the carrier's operations to service which is auxiliary to, or supplementary of, rail service.

• • • • •

33 # The motor carrier service performed by said carrier shall be limited to that which is auxiliary to or supplemental of rail service of the San Diego & Arizona Eastern Railway Company.
All shipments transported by said carrier shall receive, in addition to the movement by truck, an immediately prior or immediately subsequent movement by rail.
All contractual arrangements between said carrier and the San Diego & Arizona Eastern Railway Company shall be reported to the Interstate Commerce Commission and shall be subject to revision by it, if, and as found to be necessary, in order that such arrangements may be fair and equitable to the parties.
Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to or supplemental of rail service.

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34 # The service to be performed by said carrier shall be limited to that which is auxiliary to or supplemental of railroad or railway express service;
Said carrier shall not serve any point not a station on the rail lines of the Southern Pacific Company.
No shipments shall be transported by said carrier as a common carrier by motor vehicle between the following points, or through, or to, or from more than one of said points: Sacramento and Truckee, Calif.
All contractual arrangements between said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary, shall be reported to the Commission and shall be subject to revision if and as the Commission may find it necessary in order that such arrangements be fair and equitable to the parties; and
Such further conditions as the Commission, in the future, may find it necessary to impose in order to restrict the authorized operation to service which is auxiliary to, or supplemental of, railroad or railway express company service.

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1519

35 # The service to be performed by said carrier shall be limited to that which is auxiliary to or supplemental of railroad or railway express service;
Said carrier shall not serve any point not a station on the rail lines of the Southern Pacific Company,
All contractual arrangements between said carrier and any railroad or railway express carrier to whose services its service is auxiliary or supplementary, shall be reported to the Commission and shall be subject to revision if and as the Commis-

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* This certificate also embraces (1) Docket Nos. MC 78786 Sub 137, MC 78786 Sub 141, MC 78786 Sub 143, MC 78786 Sub 147, MC 78786 Sub 149, MC 78786 Sub 150, MC 78786 Sub 151, and the consolidations noted on the certificates previously issued to the above-named carrier under Dockets Nos. MC 78786 and MC 78786 Sub 143; and (2) a portion of the operating rights of Valley Motor Lines, Inc., Docket No. MC 936, purchased by the above-named carrier pursuant to MC-F 2073, approved March 27, 1945.

sion may find it necessary in order that such arrangements be fair and equitable to the parties; and

Such further conditions as the Commission, in the future, may find it necessary to impose in order to restrict the authorized operation to service which is auxiliary to, or supplemental of, railroad or railway express company service.

* * * * *

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for supension, change, or revocation of this certificate.

AND IT IS FURTHER ORDERED, That this certificate shall supersede the certificates issued to the above-named carrier under Dockets Nos. MC 78786 on December 4, 1944, as corrected; MC 78786 Sub 137 on September 27, 1944; MC 78786 Sub 141 on January 31, 1945; MC 78786 Sub 143 on March 17, 1945; MC 78786 Sub 147 on January 10, 1945; MC 78786 Sub 149 on April 6, 1945; and MC 78786 Sub 150 on April 7, 1945; in their entireties; and that issued to the predecessor in interest under Docket No. MC 936 on April 22, 1942, with respect to the operating rights authorized herein; and said certificates are hereby canceled to the extent they are superseded by this certificate; a portion of the operating rights authorized in the last named certificate having been duly transferred to the above-named carrier as set forth in the footnote appended hereto.

By the Commission, division 5.

W. P. BARTEL
Secretary

(SEAL)

1520 *T. & P. Motor Transport Company's Exhibit 88 C-15.1*

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

No. MC 30605*

THE SANTA FE TRAIL TRANSPORTATION COMPANY, A CORPORATION, WICHITA KANSAS.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 23rd day of November, A. D., 1948

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions

of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is Ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is Further Ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

For Commodity Specifications hereinafter referred to by letter indicated, see Sheets 25 and 26.

For Special Conditions hereinafter referred to by number, see Sheets 26, 27, 28 and 29.

All operations are over regular routes with exception on Sheet 19.

Item 1 Commodity A Source: MC 30605 (BMC 1) Also MC 30605 Sub 57	Between Omaha, Nebr., and Oklahoma City, Okla.: From Omaha over U. S. Highway 6 to Lincoln, Nebr., thence over U. S. Highway 77 via Beatrice, Nebr., to Randolph, Kans., thence over Kansas Highway 13 to Manhattan, Kans., thence over U. S. Highway 40 to Salina Kans., thence over U. S. Highway 81 to South Haven, Kans., thence over U. S. Highway 177 to junction U. S. Highway 77, and thence over U. S. Highway 77 to Oklahoma City, and return over the same route. Service is authorized to and from all intermediate points; and the off-route points of the U. S. Army Basic Training School (sometimes called Smoky Hill Air Base) and Salina Triangular Division Cantonment (sometimes called Camp Phillips), near Salina, Kans.

1521

Service is authorized to and from the off-route points of Valley Center and Sadgwick, Kans., subject to commodity specification C, and to and from points within five miles of Wichita and Enterprise, Kans., subject to commodity specification B.

Item 2
Commodity L
Source: MC 30605 (BMC1)

Between junction unnumbered highway and Kansas Highway 13 at Garrison Crossing, Kans., and Randolph, Kans., for operating convenience only:
From junction unnumbered highway and Kansas Highway 13 over unnumbered highway to Randolph, and return over the same route.
Service is not authorized to or from intermediate points.

Item 3
Commodity C
Source: MC 30605 (BMC 1)

Between Beatrice, Nebr., and Concordia, Kans., for operating convenience only:
From Beatrice over Nebraska Highway 3 to junction U. S. Highway 81, thence over U. S. Highway 81 to Concordia, and return over the same route.
Service is not authorized to or from intermediate points.

Item 4
Commodity A
Condition 1
Source: MC 30605 (BMC 1)

Between Concordia, Kans., and Salina, Kans.:
From Concordia over U. S. Highway 81 to Salina, and return over the same route.
Service is authorized to and from all intermediate points.

Item 5
Commodity A
Source: MC 30605 (BMC 1)
Also MC 30605 Sub 57

Between Omaha, Nebr., and Oklahoma City, Okla.:
From Omaha over U. S. Highway 73 to junction new U. S. Highway 73 near Howe, Nebr., thence over new U. S. Highway 73 to junction old U. S. Highway 73 near Verdon, Nebr., thence over U. S. Highway 73 to Hia-

watha, Kans., thence over U. S. Highway 36 to St. Joseph, Mo., thence return over U. S. Highway 36 to Troy, Kans., thence over Kansas Highway 7 to Atchison, Kans., thence over U. S. Highway 73 to Victory Junction, Kans., thence over U. S. Highway 40 to Kansas City, Mo., thence return over U. S. Highway 40 to Lawrence, Kans., thence over U. S. Highway 59 to junction U. S. Highway 169, thence over U. S. Highway 169 to Coffeyville, Kans., thence over U. S. Highway 166 to Caney, Kans., thence over U. S. Highway 75 to Tulsa, Okla., and thence over U. S. Highway 66 to Oklahoma City, and return over the same route.

1522 Service is authorized to and from all intermediate points; and to and from the off-route points of the Oklahoma City Air Depot and Oklahoma Aircraft Assembly Plant (sometimes called Tinker Field), approximately 12 miles east of Oklahoma City, and Will Rogers Field, approximately six miles southwest of Oklahoma City.

Service is authorized to and from the off-route point of Carlyle, Kans., subject to commodity specification C.

Between junction U. S. Highway 75 and new U. S. Highway 73 near Dawson, Nebr., and junction U. S. Highway 75 and Kansas Highway 4 north of Topeka, Kans., for operating convenience only:

From junction U. S. Highway 75 and new U. S. Highway 73 over U. S. Highway 75 to junction Kansas Highway 4, and return over the same route.

Service is not authorized to or from intermediate points.

Between Lincoln, Nebr., and junction U. S. Highways 34 and 73:
From Lincoln over U. S. Highway 34 to junction U. S. Highway 73, and return over the same route.
Service is authorized to and from all intermediate points, and the off-route point of the United States Army Air Base, approximately five miles northwest of Lincoln.
Between St. Joseph, Mo., and Kansas City, Mo.:
From St. Joseph over U. S. Highway 71 to Kansas City, and return over the same route.
Service is authorized to and from all intermediate points.

Item 6
Commodity L
Source: MC 30605 (BMC 1)

Between Kansas City, Mo., and Joplin, Mo.:
From Kansas City over U. S. Highway 50 to junction U. S. Highway 69, thence over U. S. Highway 69 to junction Kansas Highway 57, thence over Kansas Highway 57 to the Kansas-Missouri State line, and thence over Missouri Highway 57 to Joplin, and return over the same route.
Service is authorized to and from Jayhawk Ordnance Plant, near Crestline, Kans., and the Fairfax Industrial District, Kans., as off-route points.

1523
Item 7
Commodity A
Source: MC 30605 (BMC 1)

Between St. Joseph, Mo., and Moline, Kans.:
From St. Joseph over U. S. Highway 59 via Atchison, Kans., to junction Kansas Highway 4, thence over Kansas Highway 4 to junction U. S. Highway 75, thence over U. S. Highway 75 to junction U. S. Highway 50N, thence over U. S. Highway 50N to Admire, Kans., thence over Kansas Highway 99 via Emporia, Kans., to Moline (also from Admire over U.

S. Highway 50N to Allen, Kans., thence over unnumbered highway to junction Kansas Highway 99, thence over Kansas Highway 99 to Emporia; also from Allen over U. S. Highway 50N to Council Grove, Kans., thence over unnumbered highway to Emporia), and return over the same route.

Service is authorized to and from all intermediate points between St. Joseph and Admire, Kans., and those on Kansas Highway 99 between Admire and Moline, without restriction; those on U. S. Highway 50N between Admire and Council Grove, Kans., and those on unnumbered highways between Council Grove and Emporia, and between Allen and junction unnumbered highway and Kansas Highway 99, except Allen, Council Grove, Dunlap, and Americus, Kans., subject to commodity specification B; and Admire, Kans., restricted against pick-up or delivery of traffic moving to, from or through points on U. S. Highway 50N between Admire and Council Grove, those on unnumbered highway between Council Grove and Emporia, or those on unnumbered highway between Allen and junction Kansas Highway 99.

Item 8
Commodity L
Source: MC 30605
(BMC 1)

Between Atchison, Kans., and Hiawatha, Kans., for operating convenience only:

From Atchison over U. S. Highway 73 to Hiawatha, and return over the same route.

Service is not authorized to or from intermediate points.

Item 9
Commodity A
Source: MC 30605 (BMC 1)
Also MC 30605 Sub 57

Between Kansas City, Kans., and Ottawa, Kans.:

From Kansas City over U. S. Highway 50 via Olathe, Kans., to junction Kansas Highway 33, thence over Kansas Highway 33 to junction Kansas Highway 68, thence over Kansas Highway 68 to Ottawa, and return over the same route.

Service is authorized to and from all intermediate points; and the United States Naval Reserve Aviation Base, approximately seven miles southwest of Olathe, Kans., and three miles northeast of Gardner, Kans.

1524

Between junction U. S. Highway 50 and Kansas Highway 33, and junction U. S. Highways 50 and 59:

From junction U. S. Highway 50 and Kansas Highway 33 over U. S. Highway 50 to junction U. S. Highway 59, and return over the same route.

Service is authorized to and from all intermediate points.

Between Ottawa, Kans., and Newton, Kans.:

From Ottawa, over U. S. Highway 50S to Newton, and return over the same route.

Service is authorized to and from all intermediate points.

Between junction Kansas Highway 17 and U. S. Highway 81 (about three miles south of McPherson, Kans.), and Newton, Kans.:

From junction Kansas Highway 17 and U. S. Highway 81 over Kansas Highway 17 to Hutchinson, Kans., and thence over U. S. Highway 50S to Newton, and return over the same route.

Service is authorized to and from all intermediate points.

Between Olathe, Kans., and Garnett, Kans.:

From Olathe over U. S. Highway 169 to Garnett, and return over the same route.

Service is not authorized to or from intermediate points.

Between Chanute, Kans., and Caney, Kans.:

From Chanute over Kansas Highway 39 to junction U. S. Highway 75, thence over U. S. Highway 75 to Caney, and return over the same route.

Service is authorized to and from all intermediate points; and the off-route points of Fredonia and Buffalo, Kans.

Item 10
Commodity C
Source: MC 30605 (BMC 1)
Also MC 30605 Sub 52

Between Chanute, Kans., and Pittsburg, Kans.:

From Chanute over Kansas Highway 39 to junction unnumbered highway, thence over unnumbered highway to Shaw, Kans., thence over U. S. Highway 59 to Erie, Kans., thence over unnumbered highway via Walnut, Kans., to junction Kansas Highway 3, thence over Kansas Highway 3 to junction Kansas Highway 57, thence over Kansas Highway 57 to junction Kansas Highway 7, thence over Kansas Highway 7 to junction unnumbered highway, thence over unnumbered highway via Radley, Kans., to junction U. S. Highway 69, and thence over U. S. Highway 69 to Pittsburg, and return over the same route.

1525

Service is authorized to and from all intermediate points.

The following three routes for operating convenience only.

Between junction U. S. Highways 169 and 59, south of Chanute, Kans., and

junction U. S. Highway 59 and unnumbered highway at Shaw, Kans.:

From junction U. S. Highways 169 and 59 over U. S. Highway 59 to junction unnumbered highway, and return over the same route.

Between Erie, Kans., and Girard, Kans.:

From Erie over U. S. Highway 59 to junction Kansas Highway 57, thence over Kansas Highway 57 to Girard, and return over the same route.

Between junction Kansas Highway 57 and unnumbered highway at or near Edison, Kans. and junction U. S. Highway 69 and Kansas Highway 57:

From junction Kansas Highway 57 and unnumbered highway over Kansas Highway 57 to junction U. S. Highway 69, and return over the same route.

Service is not authorized to or from intermediate points.

Item 11
Commodity Q
Condition 4
Source: MC 30605
(BMC 8)

Between Joplin, Mo., and Pittsburg, Kans.:

From Joplin over U. S. Highway 66 to junction Kansas Highway 26, thence over Kansas Highway 26 to junction U. S. Highway 69, thence over U. S. Highway 69 to Pittsburgh, and return over the same route.

Service is not authorized to or from intermediate points.

Item 12
Commodity A
Source: MC 30605
(BMC 1)

Between Kansas City, Mo., and Manhattan, Kans.:

From Kansas City over Kansas Highway 10 to Lawrence, Kans., thence over U. S. Highway 40 to Manhattan, and return over the same route.

Service is authorized to and from all intermediate points.

1526 *Item 13*
Commodity C
Source: MC 30605
(BMC 1)

Between Bonner Springs, Kans., and junction Kansas Highways 7 and 10:
From Bonner Springs over Kansas Highway 7 to junction Kansas Highway 10, and return over the same route.
Service is not authorized to or from intermediate points.

Item 14
Commodity E
Source: MC 30605
(BMC 1)
Also MC 30605
Sub 46

Between Bonner Springs, Kans., and junction Kansas Highway 7 and U. S. Highway 40, for operating convenience only:
From Bonner Springs over Kansas Highway 7 to junction U. S. Highway 40, and return over the same route.
Service is not authorized to or from termini or intermediate points except as otherwise authorized.
Between Kansas City, Kans., and junction Kansas Highway 32 and U. S. Highway 40:
From Kansas City over Kansas Highway 32 to junction U. S. Highway 40, and return over the same route.
Service is authorized to and from all intermediate points.
Between junction old U. S. Highway 40 and new U. S. Highway 40 (approximately 12 miles west of Kansas City, Kans.) and the junction of said highways (approximately 14 miles west of Kansas City):
From junction old U. S. Highway 40 and new U. S. Highway 40 over new U. S. Highway 40 to junction old U. S. Highway 40, and return over the same route.
Service is not authorized to or from intermediate points.
Between Topeka, Kans., and junction U. S. Highways 24 and 59, about two miles north of Lawrence, Kans.:

From Topeka over U. S. Highway 24 to junction U. S. Highway 59, and return over the same route.
Service is authorized to and from all intermediate points.

Item 15
Commodity L
Source: MC 30605 (BMC 1)
1527

Between junction U. S. Highway 59 and Kansas Highway 4 (east of Boyle, Kans.), and Williamstown, Kans., for operating convenience only:
From junction U. S. Highway 59 and Kansas Highway 4 over U. S. Highway 59 to Williamstown, and return over the same route.
Service is not authorized to or from intermediate points.

Item 16
Commodity E
Source: MC 30605 (BMC 1)

Between Topeka, Kans., and junction Kansas Highway 4 and U. S. Highway 81:
From Topeka over Kansas Highway 4 via Herington, Kans., to junction U. S. Highway 81, and return over the same route.
Service is authorized to and from all intermediate points except Elmo, Carlton, Gypsum, Delavan, Herington, and Council Grove, Kans.; and the off-route point of Navarre, Kans.
Between Topeka, Kans., and Lyons, Kans.:
From Topeka to Herington, as specified above, and thence over U. S. Highway 50N to Lyons, and return over the same route.
Service is authorized to and from all intermediate points except Council Grove, Delavan, and Herington, Kans.; and the off-route point of Little River Kans.

Item 17
Commodity R
Source: MC 30605 Sub 45

Between Herington, Kans., and Randolph, Kans.:
From Herington over U. S. Highway 77 to Randolph, and return over the same route.

Service is authorized to and from the intermediate point of Junction City, Kans.

Item 18
Commodity L
Source: MC 30605 (BMC 1)

Between junction U. S. Highways 75 and 50N, and junction U. S. Highways 50N and 59, for operating convenience only:

From junction U. S. Highways 75 and 50N over U. S. Highway 50N via Overbrook, Kans., to junction U. S. Highway 59, and return over the same route.

Service is not authorized to or from intermediate points.

Between junction U. S. Highway 50N and Kansas Highway 31 (near Osage City, Kans.) and junction Kansas Highway 31 and U. S. Highway 75, for operating convenience only:

From junction U. S. Highway 50N and Kansas Highway 31 over Kansas Highway 31 to junction U. S. Highway 75, and return over the same route.

1528

Service is not authorized to or from intermediate points.

Item 19
Commodity M
Source: MC 30605 (BMC 1)

Between Lamont, Kans., and Burlington, Kans.:

From Lamont over unnumbered highway to Burlington, and return over the same route.

Service is authorized to and from the intermediate point of Gridley, Kans.

Item 20
Commodity M for southern movement
Commodity S and Condition 5 for northern movement

Between Madison, Kans., and Toronto, Kans.:

From Madison over unnumbered highway via Lamont, Hilltop, and Quincy, Kans., to junction U. S. Highway 54, thence over U. S. Highway 54 to junction Kansas Highway 105, and thence over Kansas High-

Source: MC 30605 (BMC 1)
Also MC 30605 Sub 49

way 105 to Toronto, and return over the same route.
Service is authorized to and from all intermediate points.

Item 21
Commodity L
Source: MC 30605 (BMC 1)

Between junction U. S. Highways 50N and 75, and Burlington, Kans.:
From junction U. S. Highways 50N and 75 over U. S. Highway 75 to Burlington, and return over the same route.
Service is not authorized to or from intermediate points.
Between junction Kansas Highway 57 and U. S. Highway 75 (near Crandall, Kans.), and Buffalo, Kans.:
From junction Kansas Highway 57 and U. S. Highway 75 over U. S. Highway 75 to Buffalo, and return over the same route.
Service is authorized to and from the intermediate point of Yates Center, Kans.
Between junction U. S. Highway 75 and Kansas Highway 39, and junction Kansas Highway 96 and U. S. Highway 75:
From junction U. S. Highway 75 and Kansas Highway 39 over Kansas Highway 39 to junction Kansas Highway 96, thence over Kansas Highway 96 via Fredonia, Kans., to junction U. S. Highway 75, and return over the same route.
Service is authorized to and from the intermediate point of Fredonia, Kans.

1529 *Item 22*
Commodity C
Source: MC 30605 (BMC 1)

Between Colony, Kans., and junction U. S. Highway 50S and Kansas Highway 57:
From Colony over unnumbered highway to junction Kansas Highway 57, thence over Kansas Highway 57 via Le Roy, Kans., to junction U.

S. Highway 50S, and return over the same route.
Service is authorized to and from all intermediate points except Le Roy.

Item 23
Commodity A
Source: MC 30605 (BMC 1)

Between Iola, Kans., and Wichita, Kans.:
From Iola over U. S. Highway 54 to Wichita, and return over the same route.
Service is authorized to and from all intermediate points.
Between El Dorado, Kans., and junction unnumbered highway and U. S. Highway 81:
From El Dorado over unnumbered highway via Kechi, Kans., to junction U. S. Highway 81, and return over the same route.
Service is authorized to and from all intermediate points.

Item 24
Commodity K
Source: MC 30605 (BMC 1)

Between Florence, Kans., and El Dorado, Kans.:
From Florence over U. S. Highway 77 to El Dorado, and return over the same route.
Service is authorized to and from all intermediate points.

Item 25
Commodity C
Source: MC 30605 (BMC 1)

Between junction U. S. Highway 50S and Kansas Highway 150, and junction U. S. Highways 77 and 50S near Florence, Kans.:
From junction U. S. Highway 50S and Kansas Highway 150 over Kansas Highway 150 to junction U. S. Highway 77, thence over U. S. Highway 77 via Marion, Kans., to junction U. S. Highway 50S, and return over the same route.
Service is authorized to and from the intermediate point of Marion, Kans.

Item 26
Commodity R
Source: MC 30605 Sub 58

Between junction U. S. Highway 54 and Kansas Highway 96, and junction Kansas Highways 96 and 39:
From junction U. S. Highway 54 and Kansas Highway 96, approximately

seven miles east of Augusta, Kans., over Kansas Highway 96 to junction Kansas Highway 99, thence over Kansas Highway 99 to Severy, Kans., thence return over Kansas Highway 99 to junction Kansas Highway 96, and thence over Kansas Highway 96 to junction Kansas Highway 39, approximately six miles north of Fredonia, Kans., and return over the same route.

1530

Service is authorized to and from the intermediate point of Severy, Kans.

Item 27
Commodity G
Source: MC 30605 (BMC 1)

Between Wichita, Kans., and junction Kansas Highway 15 and U. S. Highway 77:

From Wichita over Kansas Highway 15 to junction U. S. Highway 77, and return over the same route.

Service is authorized to and from all intermediate points.

Item 28
Commodity A
Source: MC 30605 (BMC 1)

Between Winfield, Kans., and Augusta, Kans.:

From Winfield over U. S. Highway 77 to Augusta, and return over the same route.

Service is authorized to and from all immediate points.

Between Wellington, Kans., and Fort Smith, Ark.:

From Wellington over U. S. Highway 160 to Winfield, Kans., thence over U. S. Highway 77 to Ponca City, Okla., thence over U. S. Highway 60 to Pawhuska, Okla., thence over Oklahoma Highway 11 to Tulsa, Okla., and thence over U. S. Highway 64 to Fort Smith, and return over the same route.

Service is authorized to and from all intermediate points.

Between junction U. S. Highway 81 and Kansas Highway 55, and Oxford, Kans.:

From junction U. S. Highway 81 and Kansas Highway 55 over Kansas Highway 55 to junction unnumbered highway, thence over unnumbered highway to Oxford, and return over the same route.

Service is authorized to and from the intermediate point of Belle Plaine, Kans.

Between junction U. S. Highways 169 and 160, and Independence, Kans.:

From junction U. S. Highways 169 and 160 over U. S. Highway 160 to Independence, and return over the same route.

Service is not authorized to or from intermediate points.

1531 *Item 29*
Commodity G
Source: MC 30605 (BMC 1)

Between Winfield, Kans., and Independence, Kans.:

From Winfield over U. S. Highway 160 to Independence, and return over the same route.

Service is authorized to and from all intermediate points; and the off-route point of New Salem, Kans.

Between junction U. S. Highway 160 and Kansas Highway 15, and junction Kansas Highway 15 and U. S. Highway 166:

From junction U. S. Highway 160 and Kansas Highway 15, over Kansas Highway 15 to junction U. S. Highway 166, and return over the same route.

Service is not authorized to or from intermediate points.

Item 30
Commodity C
Source: MC 30605 (BMC 1)

Between Moline, Kans., and junction Kansas Highway 99 and U. S. Highway 166 (approximately three miles south of Sedan, Kans.):

From Moline over Kansas Highway 99 to junction U. S. Highway 166, and return over the same route.

Service is authorized to and from all intermediate points except Sedan.

Item 31
Commodity Q
Condition 5
Source: MC 30605
(BMC 8)

Between Arkansas City, Kans., and Joplin, Mo.:
From Arkansas City over U. S. Highway 166 via Coffeyville, Kans., to Baxter Springs, Kans., thence over U. S. Highway 66 to Joplin, and return over the same route.
Service is authorized to and from all intermediate points between Arkansas City and Coffeyville, not including Coffeyville.

Item 32
Commodity C
Source: MC 30605
(BMC 1)

Between Coffeyville, Kans., and Collinsville, Okla., for operating convenience only:
From Coffeyville over U. S. Highway 169 to Collinsville, and return over the same route.
Service is not authorized to or from intermediate points.

Item 33
Commodity L
Source: MC 30605
(BMC 1)

Between junction Oklahoma Highways 11 and 20 at Skiatook, Okla., and junction Oklahoma Highway 20 and U. S. Highway 75, for operating convenience only:
From junction Oklahoma Highways 11 and 20 over Oklahoma Highway 20 to junction U. S. Highway 75, and return over the same route.
Service is not authorized to or from intermediate points.

Item 34
Commodity A
Source: MC 30605
(BMC 1)

Between Bartlesville, Okla., and Pawhuska, Okla.:
From Bartlesville over U. S. Highway 60 to Pawhuska, and return over the same route.
Service is authorized to and from all intermediate points.
Between Ponca City, Okla., and Tonkawa, Okla.:
From Ponca City over U. S. Highway 60 to Tonkawa, and return over the same route.
Service is authorized to and from all intermediate points.

Item 35
Commodity A
Condition 2
Source: MC 30605 (BMC 1)

Between Blackwell, Okla., and Ponca City, Okla.:
From Blackwell over U. S. Highway 177 to junction unnumbered highway four miles south of Blackwell, thence over unnumbered highway to Ponca City, and return over the same route.
Service is not authorized to or from intermediate points.

Item 36
Commodity A
Source: MC 30605 (BMC 1)
MC 30605 Sub 57

Between Enid, Okla., and Tulsa, Okla.:
From Enid over U. S. Highway 64 to Tulsa, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route point of Wentz Well, Okla.

Between Enid, Okla., and Arkansas City, Kans.:
From Enid over U. S. Highway 81 to South Haven, Kans., thence over U. S. Highway 166 to Arkansas City, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route point of the Army Air Field Base, approximately five miles south of Enid.

Between junction U. S. Highways 177 and 77, and junction U. S. Highways 77 and 60:
From junction U. S. Highways 177 and 77 over U. S. Highway 77 via Marland, Okla., to junction U. S. Highway 60, and return over the same route.
Service is authorized to and from all intermediate points.

1533 *Item 37*
Commodity E
Source: MC 30605 (BMC 1)

Between Covington, Okla., and Oklahoma City, Okla.:
From Covington over Oklahoma Highway 74 to Oklahoma City, and return over the same route.
Service is authorized to and from the intermediate points of Marshall,

Lovell, and Crescent, Okla.; and the off-route points of Douglas and Fairmont, Okla.

Between Guthrie, Okla., and junction Oklahoma Highways 74 and 33:

From Guthrie over Oklahoma Highway 33 to junction Oklahoma Highway 74, and return over the same route.

Service is not authorized to or from intermediate points.

Item 38
Commodity A
Source: MC 30605
(BMC 1)

Between Guthrie, Okla., and junction Oklahoma Highway 99 and U. S. Highway 64 about four miles north of Hallett, Okla.:

From Guthrie over Oklahoma Highway 33 to Drumwright, Okla., thence over Oklahoma Highway 99 to junction U. S. Highway 64, and return over the same route.

Service is authorized to and from all intermediate points.

Between Cleveland, Okla., and junction Oklahoma Highways 99 and 11, about two miles north of Pershing, Okla.:

From Cleveland over Oklahoma Highway 99 to junction Oklahoma Highway 11, and return over the same route.

Service is authorized to and from all intermediate points.

Between junction Oklahoma Highways 40 and 33, and Stillwater, Okla.:

From junction Oklahoma Highways 40 and 33, over Oklahoma Highway 40 to Stillwater, and return over the same route.

Service is authorized to and from all intermediate points.

Service is authorized to and from the off-route point of Perkins, Okla., subject to commodity specification D.

Item 39
Commodity C
Source: MC 30605 (BMC 1)

1534

Between Stillwater, Okla., and Ponca City, Okla.:
From Stillwater over Oklahoma Highway 40 to Ponca City, and return over the same route.
Service is authorized to and from the intermediate points of junction Oklahoma Highway 40 and U. S. Highway 64 and White Eagle, Okla.; and the off-route point of Redrock, Okla.

Item 40
Commodity D
Source: MC 30605 (BMC 1)

Between Keystone, Okla., and Stillwater, Okla.:
From Keystone over Oklahoma Highway 51 via Yale, Okla., to Stillwater, and return over the same route.
Service is authorized to and from all intermediate points except Mannford, Okla., at which point no service shall be rendered nor any traffic interchanged.

Item 41
Commodity A
Condition 2
Source: MC 30605 (BMC 1)

Between junction U. S. Highways 66 and 77 and freight terminal, Oklahoma City, Okla.:
From junction U. S. Highways 66 and 77 over unnumbered highway to junction U. S. Highway 62, thence over U. S. Highway 62 to junction Eastern Avenue, thence over Eastern Avenue to junction Reno Street, thence over Reno Street to freight terminal, and return over the same route.
Service is not authorized to or from intermediate points.

Item 42
Commodity E
Source: MC 30605 (BMC 1)

Between junction Oklahoma Highway 15 and U. S. Highway 64, and junction Oklahoma Highway 15 and U. S. Highway 77, for operating convenience only:
From junction Oklahoma Highway 15 and U. S. Highway 64, over Oklahoma Highway 15 to junction U. S.

Highway 77, and return over the same route.
Service is not authorized to or from intermediate points.

Item 43
Commodity Q
Condition 5
Source: MC 30605 (BMC 8)

Between Shawnee, Okla., and junction Oklahoma Highways 18 and 33:
From Shawnee over Oklahoma Highway 18 to junction Oklahoma Highway 33, and return over the same route.
Service is authorized to and from all intermediate points; and the off-route point of Ripley, Okla.
Between Fairfax, Okla., and Pawnee, Okla.:
From Fairfax over Oklahoma Highway 18 to Pawnee, and return over the same route.
Service is authorized to and from all intermediate points.

1535 *Item 44*
Commodity A
Source: MC 30605 (BMC 1)

Between Shidler, Okla., and Fairfax, Okla.:
From Shidler over Oklahoma Highway 18 to Fairfax, and return over the same route.
Service is authorized to and from all intermediate points; and off-route points of Ralston, Kaw City, Carter Nine, Cooper, Webb City, Lep. Lyman, De Noya, Apperson, Little Chief, and Presbury, Okla.
Between junction U. S. Highway 77 and Oklahoma Highway 11, and Blackwell, Okla.:
From junction U. S. Highway 77 and Oklahoma Highway 11 over Oklahoma Highway 11 to Blackwell, and return over the same route.
Service is authorized to and from all intermediate points.

Item 45
Commodity E
Source: MC 30605 (BMC 1)

Between Oklahoma City, Okla., and Marietta, Okla.:
From Oklahoma City over U. S. Highway 77 via Norman, Purcell,

Pauls Valley, Davis, Springer, and Ardmore, Okla., to Marietta, and return over the same route.
Service is authorized to and from all intermediate points.

Item 46
Commodity E
Source: MC 30605 (BMC 1)

Between Davis, Okla., and Sulphur, Okla.:
From Davis over Oklahoma Highway 7 to Sulphur, and return over the same route.
Service is authorized to and from all intermediate points.

Item 47
Commodity P
Condition 7 except as noted
Source: MC 4332
MC 30605
Sub 59
Condition by M-F 3081

From Blackwell, Okla., to Medford, Okla.:
From Blackwell over Oklahoma Highway 11 to Medford.
Service is authorized to and from all intermediate points.

Between Wellington, Kans., and Fairview, Okla.:
From Wellington over U. S. Highway 160 to junction Kansas Highway 14, thence over Kansas Highway 14 to junction unnumbered highway at a point approximately six miles west of Anthony, Kans., thence over unnumbered highway via Waldron, Kans., to the Kansas-Oklahoma State line, just south of Waldron, thence over unnumbered highway to junction Oklahoma Highway 58 at a point approximately four miles north of Amorita, Okla., thence over Oklahoma Highway 58 via Amorita, and Byron, Okla., to junction Oklahoma Highway 8, just north of Driftwood, Okla., thence over Oklahoma Highway 8 to junction U. S. Highway 60 near Cleo Springs, Okla., and thence over U. S. Highway 60 to Fairview, and return over the same route.
Service is authorized to and from the intermediate points of Waldron,

1536

Kans., and Amorita, Byron, and Driftwood, Okla., without restriction, subject to commodity R; other intermediate points subject to condition 7; and the off-route points of Burlington and Ingersoll, Okla.

Between Woodward, Okla., and junction Kansas Highway 14 and unnumbered highway at a point approximately six miles west of Anthony, Kans.:

From Woodward over Oklahoma Highway 15 to junction unnumbered highway, thence over unnumbered highway via Quinlan and Belva, Okla., to junction U. S. Highway 281, thence over U. S. Highway 281 to junction Kansas Highway 14, thence over Kansas Highway 14 to junction unnumbered highway at a point approximately six miles west of Anthony, and return over the same route.

Service is authorized to and from all intermediate points; and the off-route point of Capron, Okla.

Between Anthony, Kans., and Caldwell, Kans.:

From Anthony over Kansas Highway 44 to junction unnumbered highway at a point about eight miles east of Anthony, thence over unnumbered highway via Bluff City and Johnstons, Kans., to Caldwell, and return over the same route.

Service is authorized to and from all intermediate points.

Item 48
Commodity T
Condition 7 for first route under this heading
Condition 7a for second and third

Between Wichita, Kans., and Pueblo, Colo.:

From Wichita over U. S. Highway 54 to junction U. S. Highway 154, thence over U. S. Highway 154 to Dodge City, Kans., thence over U. S. Highway 50S to Garden City, Kans.,

routes under this heading
Source: MC 1171 MC 30605 Sub 62 Also MC 28930 Sub 1 Conditions by MC-F 2289 and MC 30605 Sub 62

and thence over U. S. Highway 50 to Pueblo, and return over the same route.
Service is authorized to and from all intermediate points, with those between Dodge City and Coolidge, Kans., including Dodge City and Coolidge subject to commodity specification J.

1537

Between Pueblo, Colo., and junction U. S. Highway 50 and Colorado Highway 209:
From Pueblo over Colorado Highway 96 to Boone, Colo., and thence over Colorado Highway 209 to junction U. S. Highway 50, and return over the same route.
Service is authorized to and from the intermediate points of Devine, Avondale, and Boone, Colo.
Between Hasty, Colo., and Caddoa, Colo.:
From Hasty over Colorado Highway 266 to Caddoa, and return over the same route.
Service is not authorized to or from intermediate points.

Item 49
Commodity E
Condition 8
Source: MC 30605 Sub 63

Between Scott City, Kans., and Garden City, Kans.:
From Scott City over U. S. Highway 83 to Garden City, and return over the same route.
Service is authorized to and from on rail points in relation to this route (see second sentence of condition 8).

Item 50
Commodity J
Condition 7
Source: MC 28930 Sub 1 Also MC 28930 Sub 8 and MC 30605 Sub 60

Between Kansas points as follows:
From Dodge City over Kansas Highway 45 to Elkhart.
Service is authorized to and from all intermediate points.
From Sublette over Kansas Highway 45 to Junction U. S. Highway 160, thence over U. S. Highway 160 to junction unnumbered highway, and

Condition by MC-F 3086

thence over unnumbered highway to Manter.

Service is authorized to and from all intermediate points.

From Satanta over unnumbered highways to junction county highway and U. S. Highway 160, and return over the same route.

Service is authorized to and from Ryus, Kans., and points and places within five miles of Ryus, as intermediate and off-route points.

Return over these routes.

Two routes for operating convenience only in connection with authorized operations between Dodge City, Kans., and Syracuse and Johnson, Kans.:

1538

Between Johnson, Kans., and Syracuse, Kans.:

From Johnson over U. S. Highway 270 to Syracuse.

Between Garden City, Kans., and junction U. S. Highways 83 and 160:

From Garden City over U. S. Highway 83 to junction U. S. Highway 160.

Return over these routes.

Service is not authorized to or from intermediate points.

Item 51
Irregular routes
Commodity J
Condition 7
Source: MC 28930 Sub 1
Also MC 28930 Sub 8
Condition by MC-F 3086

Between Garden City, Kans., and points and places within one and one-half miles of Garden City.

Item 52
Commodity E
Source: MC 30605 (BMC 1)
MC 30605 Sub 63

Between Hutchinson, Kans., and Wichita, Kans.:

From Hutchinson over Kansas Highway 17 to junction U. S. Highway

54, thence over U. S. Highway 54 to Wichita, and return over the same route.

Service is not authorized to or from intermediate points except as otherwise authorized.

Between Hutchinson, Kans., and Dodge City, Kans.:

From Hutchinson over Kansas Highway 96 to Lyons, Kans., thence over U. S. Highway 50N to Jetmore, Kans., and thence over U. S. Highway 283 to Dodge City, and return over the same route.

Service is authorized to and from all intermediate points; and the off-route points of Alden, Raymond, and Clarendon, Kans.

Between Great Bend, Kans., and Scott City, Kans.:

From Great Bend over Kansas Highway 96 to Scott City, and return over the same route.

Service is authorized to and from all intermediate points; and the off-route point of Heizer, Kans.

1539

Between Ness City, Kans., and Jetmore, Kans., for operating convenience only in connection with presently authorized operations between Great Bend, Kans., and Ness City and Jetmore, Kans.:

From Ness City over U. S. Highway 283 to Jetmore, and return over the same route.

Service is not authorized to or from intermediate points.

Item 53
Commodity C
Source: MC 30605 (BMC 1)

Between junction U. S. Highway 50S and unnumbered highway (about five miles north of Sylvia, Kans.), and junction U. S. Highway 50S and unnumbered highway immediately north of Sylvia:

From junction U. S. Highway 50S and unnumbered highway over U. S.

Highway 50S to junction unnumbered highway, and return over the same route.
Service is authorized to and from all intermediate points.

Item 53a
Commodity E
Source: MC 30605
(BMC 1)

Between Hutchinson, Kans., and Kinsley, Kans.:

From Hutchinson over U. S. Highway 50S to junction unnumbered highway about five miles north of Sylvia, Kans., thence over unnumbered highway to junction U. S. Highway 281, thence over U. S. Highway 281 to junction Kansas Highway 19, thence over Kansas Highway 19 to Larned, Kans., thence over Kansas Highway 45 to Kinsley, and return over the same route.
Service is authorized to and from all intermediate points, except Seward, Radium, and Ray, Kans.; and the off-route points of Frizell and Hamburg, Kans.

Item 54
Commodity J
Source: MC 30605
(BMC 1)

Between Hutchinson, Kans., and junction unnumbered highway and U. S. Highway 50S:

From Hutchinson over unnumbered highway via Partridge, Abbyville, and Plevna, Kans., to junction U. S. Highway 50S, and return over the same route.
Service is authorized to and from all intermediate points.

Item 55
Commodity E
Source: MC 30605
(BMC 1)

Between Larned, Kans., and Belpre, Kans.:

From Larned over Kansas Highway 19 to Belpre, and return over the same route.
Service is not authorized to or from intermediate points.

1540 *Item 56*
Commodity H
Source: MC 30605 (BMC 1)

Between Dodge City, Kans., and junction U. S. Highway 50S and unnumbered highway immediately north of Sylvia, Kans.:

From Dodge City over U. S. Highway 50S to junction unnumbered highway, and return over the same route.

Service is authorized to and from all intermediate points, with those intermediate points between Kinsley and Dodge City, not including Kinsley, subject to commodity specification E.

Item 57
Commodity R
Source: MC 30605 Sub 53

Between Kinsley, Kans., and Pratt, Kans.:

From Kinsley over U. S. Highway 183 to Gibson, Kans., thence over unnumbered highway via Charlet, Trousdale, Hopewell, and Byers, Kans., to Strickler, Kans., and thence over U. S. Highway 281 via Iuka, Kans., to Pratt, and return over the same route.

Service is authorized to and from all intermediate points.

Between St. John, Kans., and Strickler, Kans.:

From St. John over unnumbered highway to junction U. S. Highway 281, thence over U. S. Highway 281 to Strickler, and return over the same route.

Service is authorized to and from all intermediate points.

Item 58
Commodity O
Condition 3
Source: MC 30605 (BMC 1)
Also MC 30605 Sub 51

Between Denver, Colo., and Albuquerque, N. Mex.:

From Denver over U. S. Highway 85 via Rowe and Glorieta, N. Mex., to Albuquerque.

From Denver over U. S. Highway 85 to Rowe, N. Mex., thence over un-

numbered highway via Pecos, N. Mex., to Glorieta, N. Mex., and thence over U. S. Highway 85 to Albuquerque.
Return over these routes.
Service is authorized to and from all intermediate points, with those between Albuquerque and Santa Fe, N. Mex., including Albuquerque, subject to commodity specification R; and those between Raton, N. Mex., and Denver, including Denver, subject to commodity specification E.
Service is authorized to and from the off-route points of Valmora and Shoemaker, N. Mex.

1541 *Item 59* Between Trinidad, Colo., and La Junta, Colo.:
Commodity T
Condition 9
Source: MC 30605 Sub 61, as modified October 4, 1948

From Trinidad over U. S. Highway 350 to La Junta, and return over the same route.
Service is authorized to and from all intermediate points and the off-route point of Hoehne, Colo.

Item 60 Between Albuquerque, N. Mex., and Hot Springs, N. Mex.:
Commodity E
Source: MC 30605 (BMC 1)

From Albuquerque over U. S. Highway 85 to Hot Springs, and return over the same route.
Service is authorized to and from all intermediate points.
Service is authorized to and from off-route points within five miles of the above-specified route, subject to commodity specification R.

Item 61 Between Hot Springs, N. Mex., and Hatch, N. Mex.:
Commodity I
Source: MC 30605 (BMC 1)
MC 30605 Sub 47

From Hot Springs over U. S. Highway 85 to Hatch, and return over the same route.

Service is authorized to and from all intermediate points.

Service is authorized to and from off-route points within five miles of the above-specified route, subject to commodity specification P.

Between Silver City, N. Mex., and junction U. S. Highway 85 and New Mexico Highway 190:

From Silver City over New Mexico Highway 180 to junction U. S. Highway 85, and return over the same route.

Service is authorized to and from the intermediate points of Santa Rita, N. Mex., and those between Santa Rita and junction U. S. Highway 85 and New Mexico Highway 180, without restriction; intermediate points on New Mexico Highway 180 between Silver City and Santa Rita, and the off-route points of Fort Bayard, Fierro, and Hanover, N. Mex., in connection with the carrier's presently authorized regular route operations between Denver, Colo., and Silver City, N. Mex., restricted to traffic moving to and from Albuquerque and points north thereof on the carrier's presently authorized regular route to and from Denver, Colo. Service
1542 is authorized to and from all on-rail points on New Mexico Highway 180 between Silver City and Santa Rita, N. Mex., and as off-route points, all on-rail points between Silver City and Santa Rita within five miles of New Mexico Highway 180, restricted to traffic moving to and from El Paso, Tex., in connection with the carrier's presently authorized regular route operations between Denver, Colo., El Paso, Tex.,

and Silver City, N. Mex., subject to commodity specification C, and condition 4.

Item 62
Commodity E
Source: MC 30605
(BMC 1)

Between Hatch, N. Mex., and El Paso, Tex.:

From Hatch over U. S. Highway 85 to Las Cruces, N. Mex., thence over U. S. Highway 80 to El Paso, and return over the same route.

Service is authorized to and from all intermediate points, with those between Las Cruces and El Paso, including El Paso, and off-route points in New Mexico within five miles of the above-specified route, subject to commodity specification R.

Between Hot Springs, N. Mex., and Engle, N. Mex.:

From Hot Springs over New Mexico Highway 52 to Engle, and return over the same route.

Service is authorized to and from all intermediate points subject to commodity specification R.

Between Socorro, N. Mex., and Magdalena, N. Mex.:

From Socorro over U. S. Highway 60 to Magdalena, and return over the same route.

Service is authorized to and from all intermediate points subject to commodity specification R.

Item 63
Commodity N
Source: MC 30605
(BMC 1)

From Hot Springs, N. Mex., to El Paso, Tex.:

From Hot Springs over U. S. Highway 85 to Las Cruces, N. Mex., thence over U. S. Highway 80 to El Paso; and

Return, with no transportation for compensation except as otherwise authorized over the same route to Hot Springs.

Service is not authorized to or from intermediate points.

1543 *Item 64*
Commodity U

Condition 6
Source: MC 59814
Also MC 59814
Sub 1
MC 59814
Sub 3
MC 59814
Sub 40
Condition by MC-F
3247

Between Fort Worth, Tex., and junction unnumbered highway and U. S. Highway 77 (approximately 7½ miles south of Sanger, Tex.):

From Fort Worth over unnumbered highway via Haslet, Justin, Ponder, and Krum, Tex., to junction U. S. Highway 77, and return over the same route.

Service is authorized to and from all intermediate points.

Service is not authorized at the junction of unnumbered highway and U. S. Highway 77 (approximately 7½ miles south of Sanger, Tex.).

Between Dallas, Tex., and Lubbock, Tex.:

From Dallas over U. S. Highway 80 to Fort Worth, Tex., thence over U. S. Highway 377 to Stephenville, Tex., thence over U. S. Highway 67 to Coleman, Tex., thence over U. S. Highway 84 via Abilene, Tex., to Lubbock, and return over the same route.

Service is authorized to and from all intermediate points.

Between Coleman, Tex., and Ballinger, Tex.:

From Coleman over U. S. Highway 67 to Ballinger, and return over the same route.

Service is authorized to and from all intermediate points.

Between San Angelo, Tex., and junction U. S. Highways 83 and 84 at or near Tuscola, Tex.:

From San Angelo over U. S. Highway 67 to Ballinger, Tex., thence over U. S. Highway 83 to junction U. S. Highway 84, and return over the same route.

Service is authorized to and from all intermediate points.

Between Snyder, Tex., and Lamesa, Tex.:

From Snyder over Texas Highway 15 to Lamesa, and return over the same route.

Service is authorized to and from all intermediate points.

1544 *Item 65* Commodity V Condition 6 Source: MC 59814 Sub 18 Condition by MC-F 3247

Between Lubbock, Tex., and the site of the Government Bomber Air Field approximately nine miles west of Lubbock:

From Lubbock over Texas Highway 290 to the site of said air field, and return over the same route.

Service is not authorized to or from intermediate points.

Commodity Specifications hereinbefore referred to by letter indicated:

A *General commodities,* except livestock, and except sand, coal, rock, hay, explosives, commodities exceeding capacity of equipment, and articles prohibited by law from transportation in motor vehicles.

B *General commodities,* except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

C *General Commodities,*

D *General commodities,* except livestock, grain, petroleum products in bulk, dangerous explosives, commodities requiring special equipment, and household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467.

E *General commodities,* except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common*

Carriers of Household Goods, 17 M. C. C. 467. commodities in bulk, and those requiring special equipment,

F *General commodities,* except livestock.

G *General commodities,* except livestock, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

H *General commodities,* except those of unusual value and except dangerous explosives, commodities in bulk, and those requiring special equipment.

I *General commodities,* except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467.

J *General Commodities,* except commodities in bulk, and except livestock, explosives, inflammables, and articles of unusual value, or unusual size requiring special equipment.

K *General commodities,* except livestock, and except sand, coal, rock, explosives, articles exceeding capacity of equipment, and those prohibited by law from transportation in motor vehicle equipment.

L *General commodities,* except livestock, and except coal, sand, rock, hay, dangerous explosives, and commodities requiring special equipment.

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M *General commodities,* except livestock, explosives, commodities in bulk, and those of unusual value, or size.

N *Ore,* in bulk.

O *General commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

P *General commodities,* except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Q *General commodities,* except livestock, sand, coal, rock, hay, explosives, and those exceeding capacity of equipment.

R *General commodities,* except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

S *General commodities,* except livestock, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those of unusual value or size.

T *General commodities,* except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities requiring special equipment, and those injurious or contaminating to other lading.

U *Dangerous explosives* and *general commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment (other than those requiring refrigeration), and those injurious or contaminating to other lading.

V *Dangerous explosives* and *general commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

Special conditions hereinbefore referred to by number indicated:

1 That the carrier shall not serve, or interchange traffic at any point other than a station on the line of the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the railway, and such further limitations or restrictions as the Commission may find it necessary to impose in order to insure that the service shall be auxiliary to or supplemental of rail service to the railway and shall not unduly restrain competition.

* * * * *

2 Service is subject to such limitations or restrictions as the Commission may find it necessary to impose in order to insure that such service shall not unduly restrict competition.

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3 Service, including interchange, is excluded at any point in Colorado which is not a station on the railway if such a point is more than ten miles by highway from such a station.

* * * * *

4 The service to be performed by the carrier shall be limited to service which is auxiliary to, or supplemental of rail service of the railway.

All contractual arrangements between the carrier and the railway shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict the carrier's operation to service which is auxiliary to, or supplemental of, rail service.

* * * * *

5 The service is subject to such specific conditions as the Commission in the future may find necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

* * * * *

6 The service to be performed by the carrier except to and from Gail and Inadale, Tex., shall be limited solely to service which is auxiliary to or supplemental of, train service of the railway.

The carrier shall not render any service to, or from, or interchange traffic at, any point not a station on the railway, except Gail and Inadale.

No shipments shall be transported by the carrier between any of the following points, or through, or to or from more than one of said points: Dallas, Fort Worth (except as to shipments between Dallas, on the one hand, and Fort Worth and points

intermediate between Fort Worth and Brownwood, on the other), Brownwood, San Angelo, Sweetwater, and Lubbock, Tex.

All contractual arrangements between the carrier and the railway shall be reported to the Commission and shall be subject to revisions, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service.

* * * * *

7 The service to be performed by the carrier shall be limited to service which si auxiliary to, or supplemental of, train service of the railway.

The carrier shall not render any service to, or from, or interchange traffic at, any point not a station on the railway.

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In operating under the rights acquired to which these conditions relate, or under a combination of those rights and rights otherwise confirmed in it, the carrier shall not transport any shipment between any of the following points, or through, or to, or from, more than one of said points: Wichita, Hutchinson, and Dodge City, Kans., and Pueblo, Colo.

All contractual arrangements between the carrier and the railway shall be reported to the Commission and shall be subject to revisions, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service.

7 a The service to be performed by the carrier shall be limited to service which is auxiliary to, or supplemental of, train service of the railway.

The carrier shall not serve or interchange traffic at any point not a station on a rail line of the railway.

No shipment shall be transported by the carrier between any of the following points, or through, or to, or from more than one of said points: Witchita, Hutchinson, Wellington, and Dodge City, Kans., and Pueblo, Colo.

All contractual arrangements between the carrier and the railway shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service of the railway.

* * * * *

8 The service to be performed by the carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the railway.

The carrier shall not serve any point not a station on the railway.

No shipment shall be transported by the carrier between Dodge City, Kans., and Pueblo, Colo., or to, from, or through, more than one of said points.

All contractual arrangements between the carrier and the railway shall be reported to the Commission and shall be subject to revision if and as the Commission finds it necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future may find it necessary to impose in order to restrict the carrier's operation to service which is auxiliary to or supplemental of, rail service.

* * * * *

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9 The service to be performed by the carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the railway.

The carrier shall not serve, or interchange traffic at, any point not a station on a rail line of the railway.

Shipments transported by the carrier shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by said carrier, a prior or subsequent movement by rail.

All contractual arrangements between the carrier and the railway shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

Any repetition in the statement of the authority granted herein shall be construed as conferring only a single operating right.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

AND IT IS FURTHER ORDERED, That this certificate shall supersede the certificates issued to the above-named carrier under Docket Nos. MC 30605 on July 12, 1948, and MC 30605 Sub 62 on September 23, 1948, and said certificates are hereby canceled.

By the Commission, division 5.

(SEAL.)

W. P. BARTEL,
Secretary.

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* This certificate embraces the operating rights previously granted the above-named carrier under Docket Nos. MC 30605, including consolidations previously noted, MC 30605 Sub 62, and includes the modification authorized of MC 30605 Sub 61, decided October 4, 1948.

1549 *T. & P. Motor Transport Company's, Exhibit 89*

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 89913*

FRISCO TRANSPORTATION COMPANY, A CORPORATION, St. Louis, Missouri

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 2nd day of December, A. D., 1948

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

REGULAR ROUTES:

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Cape Girardeau, Mo., and Blytheville, Ark.: From Cape Girardeau over U. S. Highway 61 to Blytheville, and return over the same route.

Service is authorized to and from all intermediate points which are stations on the line of the St. Louis-San Francisco Railway Company, hereinafter called the railroad; and the off-route points of Crowder, Micola, Netherlands, Rockview, Shade, and Tanner, Mo.

Between Sikeston, Mo., and Poplar Bluff, Mo.:
From Sikeston over U. S. Highway 60 to Poplar Bluff, and return over the same route.
Service is authorized to and from all intermediate points which are stations on the line of the railroad; and to off-route points of Charter Oak, LaValle, and Salcedo, Mo.

1550 Between Jackson, Mo., and Arbyrd, Mo.:
From Jackson over Missouri Highway 25 to Arbyrd, and return over the same route.
Service is authorized to and from all intermediate points which are stations on the line of the railroad.

Between junction U. S. Highways 61 and 62, and Campbell, Mo.:
From junction U. S. Highways 61 and 62 over U. S. Highway 62 to Campbell, and return over the same route.
Service is authorized to and from all intermediate points which are stations on the lines of the railroad.

General commodities, except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, and commodities in bulk,

Between St. Louis, Mo., and Blytheville, Ark.:
From St. Louis over U. S. Highway 61 to Crystal City, Mo., thence over Missouri Highway 25 to junction U. S. Highway 61, thence over U. S. Highway 61 to Cape Girardeau, Mo., thence over Missouri Highway 74 to Dutchtown, Mo., thence over Missouri Highway 25 to junction Missouri Highway 55, thence over Missouri Highway 55 to junction U. S. Highway 61, and thence over U. S. Highway 61 to Blytheville, and return over the same route.
Service is authorized to and from the intermediate points of Imperial, Barnhardt, Festus, Crystal City, Ste. Genevieve, St. Mary's, Cape Girardeau, Chaffee, Oran, Sikeston, Matthews, Noxall, Kewanee, Marston, Conran, Portageville, Hayti, Steele, and Holland, Mo., and Yarbo, Ark., and the off-route points of Rush Tower, Brickeys, McBride, Menfro, Seventy-Six, Wittenberg, Neelys Landing, Vandner, McMullin, Lilbourn, and Swift, Mo.

Between Sikeston, Mo., and Leachville, Ark.:
From Sikeston over U. S. Highway 60 to junction Stoddard County, Mo., Trunk Highway A, thence over Stoddard-New Madrid Counties, Mo., Trunk Highway A to junction U. S. Highway 62, thence over New Madrid County, Mo., Trunk Highway B to junction New Madrid County, Mo., Trunk Highway T, thence over New Madrid County, Mo., Trunk Highway T to junction New Madrid County, Mo., Trunk Highway J, thence over New Madrid County, Mo., Trunk Highway J to junction New Madrid County, Mo., Trunk Highway C, thence over New Madrid County, Mo., Trunk Highway C to Clarkton, Mo., thence over Missouri Highway 25 to Arbyrd, Mo., thence over Missouri Highway 108 to the Missouri-Arkansas State line, and thence over Arkansas Highway 77 to Leachville, and return over the same route.

1551 Service is authorized to and from the intermediate points of Morehouse, Parma, Risco, Tallapoosa, Gideon, Clarkton, Holcomb, Frisbee, White Oak, Kennett, Senath, Bucoda, Arbyrd, and Arkmo, Mo., and Bovnton, Ark., and the off-route points of Canalou, Malden, Gibson, and Dillman, Mo.

Between junction Missouri Highways 25 and 55, and junction U. S. Highways 62 and 67 in Arkansas:
From junction Missouri Highways 25 and 55 over Missouri Highway 25 to Advance, Mo., thence over Stoddard-Bollinger Counties, Mo., Trunk Highway C to junction Bollinger County, Mo., Trunk Highway V, thence over Bollinger County, Mo., Trunk Highway V to junction Stoddard County, Mo., Trunk Highway K, thence over Stoddard County, Mo., Trunk Highway K to Kinder, Mo., thence over Missouri Highway 51 to junction U. S. Highway 60, thence over U. S. Highway 60 to Poplar Bluff, Mo., and thence over U. S. Highway 67 to junction U. S. Highway 62 in Arkansas, and return over the same route.
Service is authorized to and from the intermediate points of Blomeyer, Delta, Arbor, Advance, Brownwood, Sturdivant, Kinder, Puxico, Mingo, and Poplar Bluff, Mo., and the off-route points of Rombauer, Harviell, and Naylor, Mo.

Between Holcomb, Mo., and Poplar Bluff, Mo.:
From Holcomb over Missouri Highway 53 to Poplar Bluff, and return over the same route.
Service is authorized to and from the intermediate points of Campbell and Quilin, Mo., and the off-route points of Fagus and Brosley, Mo.

Between Caruthersville, Mo., and Datto, Ark.:
From Caruthersville over Missouri Highway 84 to the Missouri-Arkansas State line, thence over Arkansas Highway 90 to junction unnumbered highway, thence over unnumbered highway via Nimmons and Carryville to junction U. S. Highway 62, thence over U. S. Highway 62 to Datto, and return over the same route.
Service is authorized to and from the intermediate points of Hayti and Kennett, Mo., Nimmons, Carryville, Piggott, and Pollard, Ark., and the off-route points of Pascola and Bragg City, Mo.

RESTRICTIONS: The service authorized is subject to the following conditions:

The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of the railroad.

Said carrier shall not serve any point not a station on a rail line of the railroad.

1552 No shipments shall be transported by the carrier as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of the following points: Southbound—St. Louis, Chaffee, and Hayti, Mo., and Memphis, Tenn., and northbound—Memphis, Hayti, and St. Louis; and no shipments shall be transported by the carrier from St. Louis to points south and west of Chaffee, from points between St. Louis and Chaffee, on the one hand, to points south and west of Hayti, on the other, between Memphis and points north of Hayti, and between points intermediate to Memphis and Hayti, on the one hand, and points north of Chaffee, on the other.

All contractual arrangements between said carrier and the railway shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future may find it necessary to impose in order to

restrict said carrier's operation to service which is auxiliary to, or supplemental of, rail service.

Between Licking, Mo., and Salem, Mo.:

From Licking over Missouri Highway 32 to Salem, and return over the same route.

Service is authorized to and from all intermediate points.

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Kansas City, Kans., and Springfield, Mo., as follows:

From Kansas City over U. S. Highway 50 to Warrensburg, Mo., thence over Missouri Highway 13, via Fair Play, Mo., to Springfield.

From Kansas City as specified above to Fair Play, thence over Missouri Highway 123 to Springfield; and return over these routes to Kansas City.

Service is authorized to and from the intermediate points of Clinton, Kansas City, Bolivar, Humansville, Collins, Osceola, Deepwater, Fair Play, Walnut Grove, Aldrich, Endora, Willard, Dunnegan, Vista, Lowry City, and Slagle, Mo., and the off-route points of Phoenix and Ash Grove, Mo.

Between St. Louis, Mo., and Joplin, Mo.:

From St. Louis over U. S. Highway 66 to junction U. S. Highway 60, thence over U. S. Highway 60 to junction U. S. Highway 166, and thence over U. S. Highway 166 to Joplin, and return over the same route.

1553 Service is authorized to and from intermediate points on U. S. Highway 66 between St. Louis and Springfield (including Springfield); and to and from the off-route points of Dixon, Crocker, Swedeborg, Richland, Stoutland, and Niangua, Mo.

RESTRICTION: Said carrier is not authorized to render service from or to, or interchange traffic at, any point which is not a station on the rail lines of the railroad, if such point is more than ten miles by highway from such station.

Between Joplin, Mo., and Miami, Okla.:
From Joplin over U. S. Highway 66 to Baxter Springs, Kans., thence over U. S. Highway 166 to junction U. S. Highway 69, thence over U. S. Highway 69 to Miami (also from Baxter Springs over U. S. Highway 66 to Miami), and return over these routes to Joplin.
Service is authorized to and from all intermediate points.

Between Joplin, Mo., and Carthage, Mo.:
From Joplin over U. S. Highway 66 to Carthage, and return over the same route.
Service is authorized to and from the intermediate points of Carterville and Webb City, Mo.

Between Mt. Vernon, Mo., and Miller, Mo.:
From Mt. Vernon over Missouri Highway 39 to Miller, and return over the same route.
Service is not authorized to or from intermediate points.

Between Jonesboro, Ark., and Memphis, Tenn.:
From Jonesboro over U. S. Highway 63 to Memphis, and return over the same route.
Service is authorized to and from all intermediate points.

Between Walnut Ridge, Ark., and Jonesboro, Ark.:
From Walnut Ridge over U. S. Highway 67 to Hoxie, Ark., thence over U. S. Highway 63 to Jonesboro, and return over the same route.
Service is authorized to and from all intermediate points restricted to the pick-up and delivery of soap and soap products southbound only.

Between Blytheville, Ark., and Turrell, Ark.:
From Blytheville over U. S. Highway 61 to Turrell, and return over the same route.
1554 Service is authorized to and from all intermediate points; and the off-route points of Armorel, Dyess, Keiser, Marie, and Victoria, Ark.

Between Memphis, Tenn., and Columbus, Miss.:
From Memphis over U. S. Highway 78 to Tupelo, Miss., thence over U. S. Highway 45 to Columbus, and return over the same route.
Service is authorized to and from all intermediate points.

Between Nettleton, Miss., and Amory, Miss.:
From Nettleton over Mississippi Highway 6 to Amory, and return over the same route.

Service is authorized to and from all intermediate points.

Between Amory, Miss., and junction U. S. Highway 45 and Mississippi Highway 41:

From Amory over Mississippi Highway 41 to junction U. S. Highway 45, and return over the same route.

Service is authorized to and from all intermediate points.

Between Ada, Okla., and junction Oklahoma Highways 7 and 12, near Scullin, Okla.:

From Ada over Oklahoma Highway 12 to junction Oklahoma Highway 7, and return over the same route.

Service is authorized to and from all intermediate points.

Between Paris, Tex., and Hugo, Okla.:

From Paris over U. S. Highway 271 to Hugo, and return over the same route.

Service is authorized to and from all intermediate points.

Dangerous explosives and *general commodities*, except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Service is authorized to and from points and places in the KANSAS CITY, KANS.—KANSAS CITY, MO., COMMERCIAL ZONE, as defined by the Commission in 31 M. C. C. 5, as intermediate and off-route points in connection with carrier's authorized regular route operations to and from Kansas City, Mo., and Kansas City, Kans.

1555 *General commodities*, except dangerous explosives, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, inflammable liquids, livestock, commodities in bulk, currency, bullion, commodities requiring special equipment, and those contaminating or injurious to other lading,

Between Newburg, Mo., and junction Phelps County Road T, and U. S. Highway 66:

From Newburg over Phelps County Road T to junction U. S. Highway 66, and return over the same route.

Between Newburg, Mo., and junction Phelps County Road P, and U. S. Highway 66:

From Newburg over Phelps County Road P to junction U. S. Highway 66, and return over the same route.

Between junction U. S. Highway 66 and Missouri Highway 17, and Fort Leonard A. Wood:

From junction U. S. Highway 66 and Missouri Highway 17, over Missouri Highway 17 to Fort Leonard A. Wood and depots adjacent to said fort, and return over the same route.

Service is not authorized to or from intermediate points on the above-specified routes.

General commodities, except livestock, and except dangerous explosives other than small arms ammunition, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, currency, bullion, commodities exceeding ordinary equipment and loading facilities, loose bulk commodities, and all other commodities expressly prohibited by law,

Between Carthage, Mo., and Springfield, Mo.:

From Carthage over U. S. Highway 66 to Springfield, and return over the same route.

Service is not authorized to or from intermediate points.

General commodities, except those of unusual value, and except dangerous explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Lake City, Ark., and Blytheville, Ark.:

From Lake City over Arkansas Highway 18 to Blytheville, and return over the same route.

Service is authorized to and from all intermediate points.

1556 Operations over the above-specified route are subject to such limitations, restrictions, or modifications as the Commission may hereafter find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of the train service of the railroad, and shall not unduly restrain competition.

General commodities, except livestock, grain, petroleum products in bulk, dangerous explosives, commodities requiring special equipment, and household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467,

Between Tulsa, Okla., and Ada, Okla.:
From Tulsa over U. S. Highway 75 via Okmulgee to junction U. S. Highway 270, thence over U. S. Highway 270 to junction Oklahoma Highway 56, thence over Oklahoma Highway 56 to junction Oklahoma Highway 3, thence over Oklahoma Highway 3 to Ada, and return over the same route.
Service is authorized to and from all intermediate points.

Between Sapulpa, Okla., and Oklahoma City, Okla.:
From Sapulpa over U. S. Highway 66 to Oklahoma City, and return over the same route.
Service is authorized to and from all intermediate points, except Edmond, Okla.

Between Davis, Okla., and Durant, Okla.:
From Davis over Oklahoma Highway 7 to junction Oklahoma Highway 12, thence over Oklahoma Highway 12 to junction Oklahoma Highway 22, thence over Oklahoma Highway 22 to Tishomingo, Okla., thence return over Oklahoma Highway 22 to Ravia, Okla, thence over Oklahoma Highway 12 to junction U. S. Highway 70, thence over U. S. Highway 70 to Ardmore, Okla., thence return over U. S. Highway 70 via Madill and Kingston, Okla., to Durant, and return over the same route.
Service is authorized to and from all intermediate points except Kingston, Okla.

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, and commodities in bulk,

Between Tulsa, Okla., and Miami, Okla.:
From Tulsa over U. S. Highway 66 to Miami, and return over the same route.
Service is authorized to and from all intermediate points.

1557 *General commodities*, except automobiles, and except livestock, dangerous explosives, gasoline, and household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467,

Between Durant, Okla., and Dallas, Tex.:
From Durant over U. S. Highway 75 to Dallas, and return over the same route.

Service is authorized to and from all intermediate points which are stations on the rail lines of the railroad, or are not more than ten miles by highway from a station on said rail lines.

General commodities,

Between Walnut Ridge, Ark., and Datto, Ark.:
From Walnut Ridge over U. S. Highway 67 via Pocahontas, Ark., to Datto, and return over the same route.
Service is authorized to and from all intermediate points.

Between Nettleton, Ark., and Lake City, Ark.:
From Nettleton over Arkansas Highway 18 to Lake City, and return over the same route.
Service is not authorized to or from intermediate points.

Between West Ridge, Ark., and Marked Tree, Ark.:
From West Ridge over Arkansas Highway 40 to Marked Tree, and return over the same route.
Service is authorized to and from all intermediate points.

Service authorized over the three routes described immediately above is subject to the following conditions:

The service to be performed by said carrier shall be limited to that which is auxiliary to, or supplemental of, rail service of the railroad.

Said carrier shall not serve any point not a station on a rail line of the railroad.

Shipments transported by said carrier shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering, in addition to movement by said carrier, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

All contractual arrangements between said carrier and the railroad shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future may find it necessary to impose

in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service.

Between junction Alternate U. S. Highway 71 and U. S. Highway 166, and Alma, Ark.:

From junction Alternate U. S. Highway 71 and U. S. Highway 166, near Fidelity, Mo., over U. S. Highway 166 to Sarcoxie, Mo.; thence over Missouri, Highway 37 to the Missouri-Arkansas State line, thence over Arkansas Highway 47 to Gateway, Ark., thence over U. S. Highway 62 to Rogers, Ark., and thence over U. S. Highway 71 to Alma, and return over the same route.

Service is authorized to and from all intermediate points.

Between Springfield, Mo., and Seneca, Mo.:

From Springfield over U. S. Highway 66 to junction unnumbered highway approximately four miles west of Springfield, thence over unnumbered highway via Brookline Station to junction U. S. Highway 60, and thence over U. S. Highway 60 to Seneca, and return over the same route.

Service is authorized to and from all intermediate points.

Dangerous explosives and *general commodities*, except those of unusual value, and except inflammable liquids, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, and those requiring special equipment.

Between East St. Louis, Ill., and Cabool, Mo.:

From East St. Louis over City U. S. Highway 66 to St. Louis, Mo., thence over U. S. Highway 66 via Gray Summit, Mo. (also from East St. Louis over U. S. Highway 50 to Gray Summit), to Rolla, Mo., and thence over U. S. Highway 63 to Cabool, and return over the same route.

Service is authorized to and from the intermediate points of St. Louis and Rolla, Mo.:

Between Springfield, Mo., and Hoxie, Ark.:

From Springfield over U. S. Highway 60 to Cabool, Mo., and thence over U. S. Highway 63 to Hoxie, and return over the same route.

1559 Service is authorized to and from all intermediate points and the off-route point of Black Rock, Ark.,

except that livestock shall not be transported from or to points on that portion of U. S. Highway 63 south of Mammoth Spring, Ark., to and including Hoxie.

RESTRICTION: The authority granted above shall be subject to the following conditions:

Said carrier shall not serve any point which is not a station on the rail lines of the railroad if such point is more than ten miles by highway from such station.

No shipment shall be transported by said carrier between St. Louis, Mo., and Memphis, Tenn., or to or through or from more than one of said points over the routes herein authorized.

Service is authorized to and from the intermediate points of St. Louis, Mo., and those points between Rolla and Cabool, Mo., in connection with operations between East St. Louis, Ill., and Cabool, Mo., authorized above.

Between Willow Springs, Mo., and Van Buren, Mo.:

From Willow Springs over U. S. Highway 60 to Van Buren, and return over the same route.

Service is authorized to and from all intermediate points.

Between Raymondville, Mo., and Mountain View, Co.:

From Raymondville over Missouri Highway 17 to Mountain View, and return over the same route.

Service is authorized to and from all intermediate points.

RESTRICTION: The authority granted above shall be subject to the following condition:

No shipments shall be transported by said carrier between St. Louis, Mo., and Memphis, Tenn., or to or through or from more than one of said points over the routes herein authorized.

General commodities, except currency, bullion, inflammable liquids, commodities in bulk, commodities requiring special equipment, and household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467,

Between junction U. S. Highway 71 and Missouri Highway 35, approximately three miles south of Harrisonville, Mo., and Clinton, Mo.:

1560 From junction U. S. Highway 71 and Missouri Highway 35 over Missouri Highway 35 to junction Missouri Highway 13, thence over Missouri Highway 13 to Clinton, and return over the same route.

Service is not authorized to or from intermediate points.

Between junction of U. S. Highway 71 and Missouri Highway 35, south of Harrisonville, Mo., and Kansas City, Mo., for operating convenience only:

From junction of U. S. Highway 71 and Missouri Highway 35 over U. S. Highway 71 to Kansas City, and return over the same route.

Service is not authorized to or from intermediate points.

General commodities, except those of unusual value, livestock, commodities in bulk, and household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467,

Between Collins, Mo., and Lebanon, Mo.:

From Collins over U. S. Highway 54 to junction U. S. Highway 65, thence over U. S. Highway 65 to Louisburg, Mo., thence over Missouri Highway N to junction Missouri Highway 73, thence over Missouri Highway 73 to junction Missouri Highway 64, and thence over Missouri Highway 64 to Lebanon, and return over the same route.

Service is not authorized to or from intermediate points.

The repetition of route description with respect to the highways over which operations are authorized herein shall not be construed as granting more than a single operating right over said highways.

It Is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And It Is Further Ordered, That this certificate shall supersede the certificate issued to the above-named carrier in this proceeding on March 17, 1948, with respect to the operating rights authorized herein, and that issued to the above-named carrier under Docket No. MC 89913 Sub

44 on April 14, 1948, in its entirety, which certificates are hereby canceled to that extent.

By the Commission, division 5.

(SEAL)

W. P. BARTEL
Secretary

1561

* This certificate embraces (1) the remaining portion of the operating rights previously granted the above-named carrier in this proceeding, a portion thereof having been purchased by Missouri-Arkansas Transportation Company, a Corporation, Docket No. MC 665, pursuant to MC-F 3622, approved July 15, 1948; (2) the operating rights previously granted the above-named carrier under Docket No. MC 89913 Sub 44; and (3) the operating rights granted the above-named carrier under Docket No. MC 89913 Sub 45, Extension of Operations.

1562

T. & P. Motor Transport Company's Exhibit 90

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 107500*

BURLINGTON TRUCK LINES, INC.,
CHICAGO ILLINOIS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 7th day of September, A. D., 1948.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such

* This certificate covers the authority granted in the certificate issued in this proceeding on April 14, 1947, including the consolidation noted thereon, except as modified by the order entered in MC 107500 Sub 5 on July 12, 1948, and also embraces the operations authorized in MC 107500 Sub 5.

terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

REGULAR ROUTES:

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C., 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Denver, Colo., and McCook, Nebr., as follows:

From Denver over U. S. Highway 6 to McCook;
From Denver over U. S. Highway 85 to Greeley, Colo., thence over U. S. Highway 34 to McCook; and
Return over those routes to Denver.

Subject to the restrictions immediately following this paragraph: Service is authorized to and from all intermediate points on the above-specified routes, except that: Over U. S. Highway 6, service between the Colorado-Nebraska State line and Culbertson, Nebr., is restricted against the transportation of livestock; between the Colorado-Nebraska State line and Lamar, Nebr., service is also restricted against the transportation of poultry, and between Lamar and Culbertson the transportation of poultry is restricted to eastbound traffic only.

1563 Service is authorized to and from the off-route points of Champion, Enders and Hamlet restricted against pick-up and delivery of livestock. Over U. S. Highways 34 and 85 pick-up and delivery of livestock to and from points between Yuma and Denver, Colo., is restricted to west-bound traffic only.

RESTRICTION: No service may be rendered from or to, or traffic interchanged at any point which is not a station on the rail lines of the Chicago, Burlington, & Quincy Railroad Company, or the Colorado and Southern Railway Company, if such point is more than ten miles of highway from such a station.

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Kansas City, Mo., and Jacksonville, Ill.:

From Kansas City over U. S. Highway 71 to junction City U. S. Highway 71, thence over City U. S. Highway 71 to St. Joseph, Mo., and thence over U. S. Highway 36 to Jacksonville, and return over the same route.

Between Quincy, Ill., and junction U. S. Highways 24 and 36:

From Quincy over U. S. Highway 24 to junction U. S. Highway 36, and return over the same route.

Between junction U. S. Highway 24 and Illinois Highway 96 and junction U. S. Highway 24 and Illinois Highway 10:

From junction of U. S. Highway 24 and Illinois Highway 96, over U. S. Highway 24 to junction Illinois Highway 10, and return over the same route.

Between Kansas City, Mo., and Des Moines, Iowa:

From Kansas City over U. S. Highway 69 to Des Moines, and return over the same route.

Service is authorized to and from all intermediate points on the above-specified routes, except those between Macon and Monroe City, Mo., inclusive.

RESTRICTIONS: Carrier shall not handle any traffic originating at Jacksonville, Ill., destined to Kansas City or Hannibal, Mo., and vice versa; carrier shall not render service from or to, or interchange traffic at, any point other than a station on lines of the Chicago, Burlington, & Quincy Railroad Company; authority granted shall be subject to such further limitations as we may hereafter find it necessary to impose in order to insure that the service shall be
1564 auxiliary or supplementary to the train service of said railroad and shall not unduly restrain competition.

Between points and places in Nebraska: as folows:

From Omaha over U. S. Highway 6 to junction unnumbered highway about 4 miles southwest of Atlanta, Nebr., thence over unnumbered highway via Mascot, Nebr., to Oxford, Nebr., thence over Nebraska Highway 3 via Edison, Nebr., to junc-

tion U. S. Highway 6, and thence over U. S. Highway 6 to McCook, and return over the same route. Service is authorized to and from the off-route points of Inland and Harvard, Nebr.

From Grand Island over U. S. Highway 281 to Hastings, and return over the same route.

From McCook over U. S. Highway 83 to junction unnumbered highway (east of Wellfleet, Nebr.), thence over unnumbered highway to Wellfleet, Nebr., thence over Nebraska Highway 23 to Grainton, Nebr., and thence over Nebraska Highway 17 to Grant, and return, with no transportation for compensation, over the same route to McCook.

From Venango over unnumbered highway to Lamar, and return, with no transportation for compensation, over the same route to Venango.

Service is authorized to and from all intermediate points on the above-specified routes except those between Omaha and Lincoln, Nebr.

RESTRICTION: Carrier shall not render service from or to, or interchange traffic at, any point which is not a station on the railroad if such point is more than ten miles by highway from such a station.

From junction U. S. Highway 6 and unnumbered highway over unnumbered highway to Saronville, and return over the same route.

Service is not authorized to or from intermediate points.

From junction U. S. Highway 6 and unnumbered highway, over unnumbered highway to Juniata, and return over the same route.

Service is not authorized to or from intermediate points.

From junction U. S. Highway 6 and unnumbered highway, over unnumbered highway to Kenesaw, and return over the same route.

Service is not authorized to or from intermediate points.

1565 Between St. Louis, Mo., and junction U. S. Highway 67 and Illinois Highway 101:

From St. Louis over U. S. Highway 67 to junction Illinois Highway 101, and return over the same route.

Service is authorized to and from the intermediate points which are also stations on the lines of the Chicago, Burlington & Quincy Railroad Company.

Between junction U. S. Highway 67 and Illinois Highway 9 and junction Illinois Highway 41 and Illinois Highway 9:

From junction U. S. Highway 67 and Illinois Highway 9 over Illinois Highway 9 to junction Illinois Highway 41, and return over the same route.

Service is authorized to and from the intermediate points which are also stations on the lines of the Chicago, Burlington & Quincy Railroad Company.

Between Davenport, Iowa, and Bettendorf, Iowa:

From Davenport over U. S. Highway 67 to Bettendorf, and return over the same route.

Service is authorized to and from all intermediate points which are also stations on the lines of the Chicago, Burlington & Qpincy Railroad Company.

Between Chicago, Ill., and Omaha, Nebr., as follows:

From Chicago over U. S. Highway 34 to junction Illinois Highway 65, thence over Illinois Highway 65 to Aurora, Ill., thence over Illinois Highway 31 to junction U. S. Highway 34 (also from junction U. S. Highway 34 and Illinois Highway 65 over U. S. Highway 34 to junction Illinois Highway 31), thence over U. S. Highway 34 to Glenwood, Iowa, thence over U. S. Highway 275 to junction Iowa Highway 375, thence over Iowa Highway 375 to Council Bluffs, Iowa, and thence over U. S. Highway 6 to Omaha, and return over the same routes to Chicago.

Service is authorized to and from the intermediate points of Princeton, Ill., and those between Princeton and Omaha.

Between Davenport, Iowa, and Quincy, Ill., as follows:

From Davenport over U. S. Highway 6 to Moline, Ill., thence over U. S. Highway 150 to Galesburg, Ill., thence over Illinois Highway 41 to junction Illinois Highway 10, thence over Illinois Highway 10 to junction Illinois Highway 61, thence over Illinois Highway 61 to Ursa, Ill., thence over Illinois Highway 96 to junction U. S. Highway 24, and thence over U. S. Highway 24 to Quincy (also from junction Illinois Highway 96 and U. S. Highway 24 over Illinois Highway 96 to Quincy), and return over these routes to Davenport.

Service is authorized to and from all intermediate points.

1566 Between Davenport, Iowa, and Augusta, Ill.:
From Davenport over U. S. Highway 67 to junction Illinois Highway 92, thence over Illinois Highway 92 to Taylor Ridge, Ill., thence over Illinois Highway 94 to junction Illinois Highway 135, thence over Illinois Highway 135 to junction Illinois Highway 164, thence over Illinois Highway 164 to Monmouth Ill., thence over U. S. Highway 67 to junction Illinois Highway 101, and thence over Illinois Highway 101 to Augusta, and return over the same route.
Service is authorized to and from all intermediate points.

Between New Boston, Ill., and junction U. S. Highway 34 and Illinois Highway 17:
From New Boston over Illinois Highway 17 to junction U. S. Highway 34, and return over the same route.
Service is authorized to and from all intermediate points.

Between Alexis, Ill., and junction Illinois Highway 135 and Illinois Highway 94:
From Alexis over Illinois Highway 135 to junction Illinois Highway 94, and return over the same route.
Service is authorized to and from all intermediate points.

Between Monmouth, Ill., and junction U. S. Highway 67 and Illinois Highway 135:
From Monmouth over U. S. Highway 67 to junction Illinois Highway 135, about 2 miles south of Norwood, Ill., and return over the same route.
Service is authorized to and from all intermediate points.

Between Galesburg, Ill., and Peoria, Ill.:
From Galesburg over U. S. Highway 150 to Peoria, and return over the same route.
Service is authorized to and from all intermediate points.

Between junction U. S. Highway 34 and Illinois Highway 78 and junction U. S. Highway 150 and Illinois Highway 91:
From junction U. S. Highway 34 and Illinois Highway 78 over Illinois Highway 78 to junction Illinois Highway 17, thence over Illinois Highway

17 to Wyoming, Ill., and thence over Illinois Highway 91 to junction U. S. Highway 150, and return over the same route.

Service is authorized to and from all intermediate points.

1567 Between Elmwood, Ill., and junction U. S. Highway 150 and Illinois Highway 8:

From Elmwood over Illinois Highway 8 to junction U. S. Highway 150 and return over the same route.

Service is authorized to and from all intermediate points.

Between Peoria, Ill., and St. Augustine, Ill.:

From Peoria over Illinois Highway 116 to St. Augustine, and return over the same route.

Service is authorized to and from all intermediate points.

Between Peoria, Ill., and junction Illinois Highway 41 and Illinois Highway 9:

From Peoria over U. S. Highway 24 to Banner, Ill., thence over Illinois Highway 9 o junction Illinois Highway 41, and return over the same route.

Service is authorized to and from all intermediate points.

Between Havana, Ill., and junction Illinois Highway 78 and Illinois Highway 8:

From Havana over Illinois Highway 78 to junction Illinois Highway 8, and return over the same route.

Service is authorized to and from all intermediate points.

Between West Havana, Ill., and junction Illinois Highway 10 and Illinois Highway 41:

From West Havana over Illinois Highway 10 to junction Illinois Highway 41, and return over the same route.

Service is authorized to and from all intermediate points; and the off-route point of Vermont, Ill.

Between Rapatee, Ill., and junction Illinois Highway 97 and Illinois Highway 78:

From Rapatee over Illinois Highway 97 to junction Illinois Highway 78, and return over the same route.

Service is authorized to and from all intermediate points.

Between Duncans Mills, Ill., and junction Illinois Highway 100 and Illinois Highway 78:

From Duncans Mills over Illinois Highway 100 to junction Illinois Highway 78, and return over the same route.

Service is authorized to and from all intermediate points.

1568 Between junction Illinois Highway 41 and Illinois Highway 95 and junction Illinois Highway 97 and Illinois Highway 95:

From junction Illinois Highway 41 and Illinois Highway 95 over Illinois Highway 95 to junction Illinois Highway 97, and return over the same route.

Service is authorized to and from all intermediate points.

Between Burlington, Iowa, and Ursa, Ill.:

From Burlington over U. S. Highway 61 to Keokuk Iowa, thence across the Mississippi River to Hamilton, Ill., and thence over Illinois Highway 96 to Ursa, and return over the same route.

Service is authorized to and from all intermediate points.

Between Fort Madison, Iowa, and junction Illinois Highway 9 and U. S. Highway 67:

From Fort Madison across the Mississippi River to Niota, Ill., and thence over Illinois Highway 9 to junction U. S. Highway 67, and return over the same route.

Service is authorized to and from all intermediate points.

Between Bowen, Ill., and junction Illinois Highway 94 and Illinois Highway 9:

From Bowen over Illinois Highway 94 to junction Illinois Highway 9, and return over the same route.

Service is authorized to and from all intermediate points.

Between Hamilton, Ill., and Carthage, Ill.:

From Hamilton over Illinois Highway 10 to Carthage, and return over the same route.

Service is authorized to and from all intermediate points.

Between points in Illinois as follows:

From Henderson over unnumbered highway to junction U. S. Highway 150;

From Swan Creek over unnumbered highway to junction U. S. Highway 67; and
Return over these routes to the above-specified origin points.
Service is not authorized to or from intermediate points.

1569 Between Oskaloosa, Iowa, and Chariton, Iowa:
From Oskaloosa over U. S. Highway 63 to Bloomfield, Iowa, thence over Iowa Highway 2 to Corydon, Iowa, and thence over Iowa Highway 14 to Chariton, and return over the same route.
Service is authorized to and from all intermediate points.

Between Corning, Iowa, and Red Oak, Iowa:
From Corning over Iowa Highway 148 to Bedford, Iowa, thence over Iowa Highway 2 to Shenandoah, Iowa, and thence over Iowa Highway 48 to Red Oak, and return over the same route.
Service is authorized to and from all intermediate points.

Between points in Iowa, as follows:
From Lenox over Iowa Highway 49 to junction U. S. Highway 34;
From Prescott over Iowa Highway 186 to junction U. S. Highway 34;
From Carbon over unnumbered highway to junction U. S. Highway 34;
Return over these routes to the above-specified origin points.
Service is authorized to and from the intermediate points of Brooks and Nodaway, Iowa.

Between Omaha, Nebr., and junction U. S. Highway 275 and Iowa Highway 375;
From Omaha over U. S. Highway 275 to junction Iowa Highway 375, and return over the same route.
Service is not authorized to or from intermediate points.

From Hamilton, Ill., to Niota, Ill.:
From Hamilton over Illinois Highway 96 to Niota, with no transportation for compensation or return.
Service is authorized to and from all intermediate points.

Between Brighton, Colo., and Billings, Mont., as follows:

From Brighton over U. S. Highway 85 to Cheyene, Wyo., thence over U. S. Highway 87 via Casper, Wyo., to Billings;

From Brighton to Casper as specified above, thence over U. S. Highway 20 to junction U. S. Highway
1570 310, thence over U. S. Highway 310 via Deaver, Wyo., to Laurel, Mont., thence over U. S. Highway 10 to Billings;

From Brighton to Casper, as specified above, thence over U. S. Highway 20 to Cody, Wyo., thence over Wyoming Highway 14 to Garland, Wyo., thence over Wyoming Highway 114 to Deaver, and thence to Billings as specified above; and

Return over these routes to Brighton.

Service is authorized to and from intermediate points in Wyoming and Montana; and the off-route points of Edgerton, Big Horn, Fort Francis E. Warren, Gebo, Burlington, Meeteetse, Kane, and Byron, Wyo.

RESTRICTION: No service may be rendered from or to, or traffic interchanged at any point which is not a station on the rail lines of the Chicago, Burlington & Quincy Railroad Company, or the Colorado and Southern Railway Company, if such point is more than ten miles by highway from such a station, except Burlington and Meeteetse, Wyo.

Between Holyoke, Colo., and Grant, Nebr.:

From Holyoke over Colorado Highway 176 to Colorado-Nebraska State line, thence over Nebraska Highway 17 to Grant, and return over the same route.

Service is authorized to and from the intermediate points of Amherst, Colo., and Venango and Brandon, Nebr., without restriction, and those between Grant and Venango, Nebr., other than Brando, restricted to pick-up and delivery on westbound traffic only.

RESTRICTION: No service may be rendered from or to, or traffic interchanged at any point which is not a station on the lines of the Colorado and Southern Railway Company, if such point is more than ten miles by highway from such a station.

General commodities, except dangerous explosives, and except commodities requiring special equipment, in truckloads,

Between Des Moines, Iowa, and the Des Moines, Iowa Ordnance Plant:

From Des Moines over Iowa Highway 60 to junction unnumbered highway, thence over unnumbered highway to the Des Moines Ordnance Plant;
From Des Moines over U. S. Highway 69 to the Des Moines Ordnance Plant; and
Return over these routes to Des Moines.
Service is not authorized to or from intermediate points.

RESTRICTION: Said carrier shall not interchange traffic at Des Moines which originates at, or is destined to, the Des Moines Ordnance Plant.

1571 *General commodities,* except those of unusual value, except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M. C. C. 467, commodities in bulk, and those requiring special equipment,

Between junction U. S. Highway 6 and Nebraska Highway 46 and junction U. S. Highway 6 and Nebraska Highway 3:

From junction U. S. Highway 6 and Nebraska Highway 46 over U. S. Highway 6 to junction Nebraska Highway 3, and return over the same route.
Service is not authorized to or from intermediate points.

Between junction U. S. Highway 6 and Nebraska Highway 46, and junction U. S. Highway 6 and unnumbered highway, near Atlanta, Nebr.:

From junction U. S. Highway 6 and Nebraska Highway 46 over U. S. Highway 6 to junction unnumbered highway, and return over the same route.

RESTRICTION: Operation over the above route shall be conducted for operating convenience only.

General commodities, except dangerous explosives, livestock, commodities in bulk, and those requiring special equipment,

Between Lucas, Iowa, and junction U. S. Highway 65 and 69, south of Indianola, Iowa:

From Lucas over U. S. Highway 65 to junction U. S. Highway 69, and return over the same route.

Service is not authorized to or from intermediate points.

Service is authorized to and from the off-route points of Lacona and Milo, Iowa.

Between Corydon, Iowa, and Bedford, Iowa:

From Corydon over Iowa Highway 2 to Bedford, and return over the same route.

Service is authorized to and from the intermediate points of Leon, Decatur, Kellerton, and Mount Ayr, Iowa.

Between Clarinda, Iowa, and junction U. S. Highways 71 and 34, at or near Tenville Junction, Iowa:

From Clarinda over U. S. Highway 71 to junction U. S. Highway 34, and return over the same route.

Service is authorized to and from the intermediate point of Villisca, Iowa, and the off-route point of Hepburn, Iowa.

Between Shenandoah, Iowa, and junction U. S. Highways 275 and 34, south of Balfour, Iowa:

1572 From Shenandoah over Iowa Highway 2 to Sidney, Iowa, thence over U. S. Highway 275 to junction U. S. Highway 34, and return over the same route.

Service is authorized to and from the intermediate point of Sidney, Iowa.

RESTRICTIONS: Service shall be limited to service which is auxiliary to, or supplemental of, rail service of the Chicago, Burlington, & Quincy Railroad Company; all contractual arrangements between said carrier and the said railroad shall be reported to the Commission and shall be subject to revision, if and as we may find it necessary in order to insure that such arrangements shall be fair and equitable to the parties; authority granted shall be subject to such further specific conditions as we, in the future, may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the said railroad.

Between St. Joseph, Mo., and Clarinda, Iowa:

From St. Joseph over U. S. Highway 71 to Clarinda, and return over the same route.

Service is authorized to and from all intermediate points.

RESTRICTIONS: Service shall be limited to service which is auxiliary to, or supplemental of, rail service of the Chicago, Burlington, & Quincy Rail-

road Company; carrier shall not serve any point not a station on the rail line of the said railroad; no shipments shall be transported over the above-described route, which move from, to, or through Kansas City, Mo.-Kans., or St. Joseph, Mo., on the one hand, and, on the other, Omaha, Nebr., or Council Bluffs, Iowa; all contractual arrangements between said carrier and said railroad shall be reported to the Commission and shall be subject to revision, if, and as, we may find it necessary in order to insure that such arrangements shall be fair and equitable to the parties; authority granted shall be subject to such further specific conditions as we, in the future, may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the said railroad.

Between Sheffield, Ill., and Davenport, Iowa:

From Sheffield over U. S. Highway 6 to Davenport, and return over the same route.

Service is authorized to and from the intermediate points of Moline and Rock Island, Ill.

General commodities, except those of unusual value, dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, and those requiring special equipment, over regular routes,

1573 Between Des Moines, Iowa and Albia, Iowa:

From Des Moines over Iowa Highway 60 to Albia, and return over the same route.

Service is authorized to and from all intermediate points between Knoxville, Iowa, and Albia, including Knoxville, and the off-route point of Bussey, Iowa.

RESTRICTION: Service at Knoxville may be performed only in connection with the pick-up of southbound traffic and the delivery of northbound traffic.

IRREGULAR ROUTES:

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between points and places in the CHICAGO, ILL., COMMERCIAL ZONE, as defined by the Commission in 1 M. C. C. 673, and Chicago Heights, Ill.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

AND IT IS FURTHER ORDERED, That this certificate shall supersede the certificate issued in this proceeding on April 14, 1947, which is hereby canceled.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

*This certificate covers the authority granted in the certificate issued in this proceeding on April 14, 1947, including the consolidation noted thereon, except as modified by the order entered in MC 107500 Sub 5 on July 12, 1948, and also embraces the operations authorized in MC 107500 Sub 5.

1575

In the
Supreme Court of the United States
OCTOBER TERM, 1950.

No. 38

Statement of Points to be Relied on and Designation of Parts of Record Necessary for Consideration Thereof —Filed April 13, 1950

1. Now comes appellants, United States of America and Interstate Commerce Commission, and for their statement of points upon which they intend to rely in their appeal to this Court, adopt the points contained in their assignment of errors heretofore filed therein.

2. The following parts of the record are necessary for the consideration of the foregoing points:

A. The record in this cause filed in this Court pursuant to appellants' praecipe, but including only the following parts of Item No. 16 thereof, the record before the Interstate Commerce Commission in Docket MC-50544 and various sub-numbers, to wit:

1. Transcript of Testimony in hearing held at Dallas, Texas, on February 11, 1942, pages 1 to 71.

2. Transcript of Testimony in hearing held at Dallas, Texas, October 17, 1944, pages 72-147.

3. Transcript of Testimony in hearing held at Shreveport, La., on June 24, 1937, pages 1 to 105 (MC-No. 50544).

4. Statement C-2 to application of The Texas and Pacific Motor Transport Company in MC-50544 (Sub. No. 1).

1576 5. Certificate of Public Convenience and Necessity dated May 31, 1939, in MC-50544 (Sub. No. 1) issued to The Texas and Pacific Motor Transport Company.

6. Transcript of Testimony in hearing held November 11, 1936, in MC-F-107 and MC-F-108, pages 1 to 117.

7. Transcript of Testimony in hearing held at Dallas, Texas on August 27, 1937, in Docket No. MC-F-378, pages 1 to 89.

Appellants designate the foregoing specified parts of the record for printing by the Clerk of this Court.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

DANIEL W. KNOWLTON
Daniel W. Knowlton,
Chief Counsel,
Interstate Commerce Commission.

1577 *Certificate of Service*

I hereby certify that I served the attached Statement of Points to be Relied on and Designation of Parts of Record Necessary for Consideration Thereof upon appellee herein by mailing on April 12, 1950, a copy thereof to the following persons, its attorneys:

J. T. Suggs, Esq.,
D. L. Case, Esq.,
Robert Thompson, Esq.,
Texas & Pacific Building,
Dallas, Texas.

John C. Robertson, Esq.,
J. L. Lancaster, Jr., Esq.,
Claude Williams, Esq.,
Republic Bank Building,
Dallas, Texas.

H. L. UNDERWOOD
Assistant Chief Counsel
Interstate Commerce Commission

Dated, April 12, 1950.

1578 (File Endorsement Omitted)

1579 Supreme Court of the United States
OCTOBER TERM, 1950

No. 39

Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed—Filed April 11, 1950

Comes now Regular Common Carrier Conference of American Trucking Associations, Inc., the appellant in the above entitled cause, and adopts its assignment of errors as its statement of the points to be relied upon in this court.

Appellant designates the following parts of the record, as filed, to be printed:

Title of Paper	*Record Page*
1. Answer of Regular Common Carrier Conference of American Trucking Associations, Inc.	78-79
2. Motion of Regular Common Carrier Conference for Additional Findings of Fact.	256-257

Dated April 11th, 1950.

FRANK C. BROOKS
Frank C. Brooks
Counsel for Appellant

Due service and receipt of a copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed is hereby acknowledged this 11th day of April, 1950.

D. L. CASE
Counsel for Appellee

1581 (File Endorsement Omitted)

1582 In the Supreme Court of the United States
October Term 1950

Nos. 38, 39

Statement by Appellee of Additional Parts of the Record to be Printed—Filed April 25, 1950

The Texas and Pacific Motor Transport Company, the Appellee in the above entitled cause, hereby designates the following parts of the record which it thinks material in

addition to the parts of the record set forth in the statement filed by Appellants herein, pursuant to paragraph 9 of Supreme Court Rule 13:

	Title of Paper	*Page of Record*
1.	Stenographer's transcript of the proceedings before the Court in Dallas, Texas, on November 11, 1949, in Civil Action No. 3696.	103-234
2.	Petition dated August 7, 1941 of The Texas and Pacific Motor Transport Company for orders defining its rights under certain certificates.	MC-50544 Title Case Marker #4
3.	Transcript of hearing held on February 11, 1942 at Dallas, Texas.	MC-50544 General Proceedings Marker #1
4.	Report of the Commission by Division 5 dated January 21, 1943, defining operating rights under certain certificates of The Texas and Pacific Motor Transport Company.	MC-50544 General Proceedings Marker #2
5.	Petition dated May 20, 1943 of The Texas and Pacific Motor Transport Company for reconsideration and oral argument.	MC-50544 General Proceedings Marker #3
6.	Order of the Commission by Division 5 dated February 14, 1944, reopening hearings on certain certificates of The Texas and Pacific Motor Transport Company.	MC-50544 General Proceedings Marker #4
7.	Order of the Commission by Division 5 dated February 14, 1944, denying petition of May 20, 1943.	MC-50544 General Proceedings Marker #5
1583 8.	Petition of The Texas and Pacific Motor Transport Company dated August 5, 1944 for cancellation of further hearings ordered in the Commission's Division 5 order of February 14, 1944.	MC-50544 General Proceedings Marker #6

9.	Order of the Commission by Division 5 dated August 30, 1944, denying petition dated August 5, 1944 and assigning proceedings for further hearing at Dallas, Texas on October 17, 1944.	MC-50544 General Proceedings Marker #7
10.	Transcript of hearing held on October 17, 1944 at Dallas, Texas.	MC-50544 General Proceedings Marker #8
11.	Report and order recommended by Examiners David Waters and Harold P. Boss, dated July 5, 1946.	MC-50544 General Proceedings Marker #9
12.	Exceptions of The Texas and Pacific Motor Transport Company dated August 22, 1946 to the proposed report and order dated July 5, 1946.	MC-50544 General Proceedings Marker #10
13.	Order of the Commission by Division 5 dated February 21, 1944 assigning for further hearing The Texas and Pacific Motor Transport Company's purchased certificates.	MC-50544 General Proceedings Marker #11
14.	Report and order of the Commission by Division 5 dated January 22, 1948, imposing conditions upon The Texas and Pacific Motor Transport Company's certificates.	MC-50544 General Proceedings Marker #12
15.	Petition of The Texas and Pacific Motor Transport Company dated April 8, 1948 for reconsideration and for vacation of the report and order of Division 5 dated January 22, 1948.	MC-50544 General Proceedings Marker #13
16.	Order of the Commission dated May 9, 1949, denying petition for reconsideration and vacation of report and order of Division 5 dated January 22, 1948.	MC-50544 General Proceedings Marker #14
17.	Order of the Commission by Chairman Mahaffie dated June 22, 1949, postponing effective date of the order dated January 22, 1948 to August 4, 1949.	MC-50544 General Proceedings Marker #15

18.	Application dated January 16, 1936 of The Texas and Pacific Motor Transport Company for certificate of convenience and necessity.	MC-50544 Title Case Marker #1
19.	Report and order recommended by Joint Board No. 33 dated July 3, 1937.	MC-50544 Title Case Marker #2
20.	Report and order of the Commission by Division 5 dated March 2, 1939, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Title Case Marker #3
21.	Certificate of convenience and necessity issued by the Commission dated October 10, 1941.	MC-50544 Title Case Marker #5
22.	Report and order of the Commission by Division 5 dated December 2, 1938 granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-1 Marker #1
1584 23.	Certificate of Convenience and necessity issued by the Commission dated May 31, 1939.	MC-50544 Sub-1 Marker #2
24.	Report and order of the Commission by Division 5 dated May 27, 1939 granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-2 Marker #1
25.	Certificate of convenience and necessity issued by the Commission dated August 7, 1939.	MC-50544 Sub-2 Marker #2
26.	Report and order of the Commission by Division 5 dated December 31, 1941 eliminating condition 3.	MC-50544 Sub-2 Marker #3
27.	Report and order of the Commission by Division 5 dated May 27, 1939 granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-3 Marker #1
28.	Certificate of convenience and necessity issued by the Commission dated December 2, 1939.	MC-50544 Sub-3 Marker #2

29.	Report and order of the Commission by Division 5 dated November 20, 1939 granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub 4 Marker #1
30.	Certificate of convenience and necessity issued by the Commission dated January 15, 1940.	MC-50544 Sub-4 Marker #2
31.	Freight tariff No. 5 of The Texas and Pacific Motor Transport Company issued March 18, 1936, effective April 1, 1936.	MC-50544 Sub-5 Marker #1
32.	Order of the Commission by Division 5 dated March 15, 1938, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-5 Marker #2
33.	Order of the Commission by Division 5 dated April 27, 1938, correcting order dated March 15, 1938.	MC-50544 Sub-5 Marker #3
34.	Order of the Commission by Division 5 dated September 8, 1938 vacating orders of March 15, 1938 and April 27, 1938.	MC-50544 Sub-5 Marker #4
35.	Application of The Texas and Pacific Motor Transport Company dated August 22, 1936 to purchase certificate of convenience and necessity from the Fort Worth Warehouse and Storage Company, Inc.	MC-50544 Sub-5 Marker #5
36.	Order of the Commission by Division 5 dated September 21, 1938 granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-5 Marker #6
37.	Order of the Commission by Division 5 dated July 28, 1941, amending order of September 21, 1938 by imposing conditions.	MC-50544 Sub-5 Marker #7
38.	Motion of The Texas and Pacific Motor Transport Company to vacate or postpone effective date of Commission's order dated July 28, 1941.	MC-50544 Sub-5 Marker #8

1585	39.	Letter from the Railroad Commission of Texas to the Interstate Commerce Commission dated August 11, 1941.	MC-50544 Sub-5 Marker #9
	40.	Order of the Commission by Division 5 dated August 16, 1941, amending order dated July 28, 1941.	MC-50544 Sub-5 Marker #10
	41.	Letter from Claude R. Porter, Acting Chairman of Division 1 of the Interstate Commerce Commission, to the Railroad Commission of Texas dated August 19, 1941.	MC-50544 Sub-5 Marker #11
	42.	Certificate of convenience and necessity issued by the Commission dated September 21, 1942.	MC-50544 Sub-5 Marker #12
	43.	Report and order recommended by Joint Board dated April 1, 1937.	MC-50544 Subs-5 and 6 Marker #1
	44.	Report and order of the Commission by Division 5 dated May 20, 1937, authorizing purchase by The Texas and Pacific Motor Transport Company of portions of the operating rights of Johnson Motor Lines and Fort Worth Warehouse and Storage Company, Inc.	MC-50544 Subs-5 and 6 Marker #2
	45.	Order of the Commission by Division 5 dated November 28, 1938, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-6 Marker #1
	46.	Certificate of convenience and necessity issued by the Commission dated December 14, 1942.	MC-50544 Sub-6 Marker #2
	47.	Application of The Texas and Pacific Motor Transport Company dated August 22, 1936 to purchase certificate of convenience and necessity from W. A. Johnson d/b/a Johnson Motor Lines.	MC-50544 Sub-6
	48.	Report and order of the Commission by Division 5 dated October 21, 1941, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-7 Marker #1

49.	Certificate of convenience and necessity issued by the Commission dated December 23, 1941.	MC-50544 Sub-7 Marker #2
50.	Order of the Commission by Division 5 dated March 3, 1939, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-8 Marker #1
51.	Order of the Commission by Division 5 dated November 30, 1942, amending order of March 3, 1939.	MC-50544 Sub-8 Marker #2
52.	Certificate of convenience and necessity issued by the Commission dated March 10, 1943.	MC-50544 Sub-8 Marker #3
53.	Application of The Texas and Pacific Motor Transport Company dated July 10, 1937, to purchase certificate of convenience and necessity from Southern Transportation Company.	MC-50544 Sub-8
1586 54.	Order of the Commission by Division 5 dated May 18, 1940, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-9 Marker #1
55.	Certificate of convenience and necessity issued by the Commission dated August 9, 1940.	MC-50544 Sub-9 Marker #2
56.	Report and order of the Commission by Division 5 dated September 2, 1941, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-10 Marker #1
57.	Certificate of convenience and necessity issued by the Commission dated October 1, 1941.	MC-50544 Sub-10 Marker #2
58.	Report and order of the Commission by Division 5 dated March 21, 1942, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-11 Marker #1
59.	Certificate of convenience and necessity issued by the Commission dated May 7, 1942.	MC-50544 Sub-11 Marker #2

60.	Order of the Commission by Division 5 dated July 7, 1943, staying the effective date of the recommended report and order of Joint Board No. 77 dated June 7, 1943.	MC-50544 Sub-11 Marker #3
61.	Order of the Commission by Commissioner Lee dated June 26, 1943, postponing recommended report and order of Joint Board No. 77 dated June 7, 1943.	MC-50544 Sub-11 Marker #4
62.	Report and order recommended by Joint Board No. 77 dated June 7, 1943, modifying conditions 1 and 3.	MC-50544 Sub-11 Marker #5
63.	Order of the Commission by Division 5 dated March 16, 1942, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-12 Marker #1
64.	Certificate of convenience and necessity issued by the Commission dated May 4, 1942.	MC-50544 Sub-12 Marker #2
65.	Order of the Commission by Division 5 dated October 3, 1941, granting certificate to The Texas and Pacific Motor Transport Company,	MC-50544 Sub-14 Marker #1
66.	Certificate of convenience and necessity issued by the Commission dated November 8, 1941.	MC-50544 Sub-14 Marker #2
67.	Report and order of the Commission by Division 5 dated June 22, 1942, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-19 Marker #1
68.	Certificate of convenience and necessity issued by the Commission dated October 21, 1942.	MC-50544 Sub-19 Marker #2
69.	Order of the Commission by Division 5 dated July 6, 1942, granting certificate to The Texas and Pacific Motor Transport Company.	MC-50544 Sub-22 Marker #1
1587 70.	Certificate of convenience and necessity issued by the Commission dated September 12, 1942.	MC-50544 Sub-22 Marker #2

71.	Report of the Commission by Division 5 in Pennsylvania Truck Lines, Inc., Acquisition of Control of Barker Motor Freight, Inc. Decided October 8, 1936, reported in 1 Motor Carrier Cases 101.	T. & P. Motor Transport Company's Exhibit 1.
72.	Report of the Commission by Division 5 in Pennsylvania Truck Lines, Inc., Acquisition of Control of Barker Motor Freight, Inc. Decided March 6, 1937, reported in 5 Motor Carrier Cases 9.	T. & P. Motor Transport Company's Exhibit 1.
73.	Report of the Commission by Division 4 in Southwestern Transportation Company Purchase-Thomas Hill and Roy Howe. Decided July 22, 1941, reported in 37 Motor Carrier Cases 83.	T. & P. Motor Transport Company's Exhibit 2.
74.	Report of the Commission by Division 4 in Southern Pacific Company-Control; Pacific Motor Trucking Company-Purchase-Valley Motor Lines, Inc. Decided December 23, 1943, reported in 39 Motor Carrier Cases 441.	T. & P. Motor Transport Company's Exhibit 3.
75.	Dissenting opinion from report of the Commission in the Rock Island Motor Transit-Purchase-White Line Motor Freight Company, Inc., *et al.* Decided March 4, 1946, reported in 40 Motor Carrier Cases 457.	T. & P. Motor Transport Company's Exhibit 4.
76.	First 6 pages and the first 3 paragraphs on page 7, of the decision of the Commission in Pennsylvania Truck Lines, Inc., Extension-Lebanon, Ohio, etc., M. C. 1920(1) (Sub-No. 34). Decided January 6, 1948, reported but not printed in full 47 Motor Carrier Cases 837.	T. & P. Motor Transport Company's Exhibit 5.
77.	Order of the Commission dated July 21, 1936, in The Matter of Regulations Governing the Adoption of Tariffs, Schedules, and Supplements filed pursuant to Sections 217 and 218 of the Motor Carrier Act, 1935, approving and making effective August 10, 1936 Special Circular M No. 1.	T. & P. Motor Transport Company's Exhibit 6.

78.	The Commission's Special Circular M No. 1 setting forth Regulations Governing the Publication and filing of Adoption Notices, etc.	T. & P. Motor Transport Company's Exhibit 6.
79.	Amendment No. 1 to Special Circular M No. 1, and the Commission's order of September 29, 1938 approving said Amendment effective September 29, 1938.	T. & P. Motor Transport Company's Exhibit 6.
80.	Amendment No. 2 to Special Circular M No. 1, and the Commission's order dated April 30, 1940, putting into effect Amendment No. 2 to Special Circular M No. 1.	T. & P. Motor Transport Company's Exhibit 6.
81.	The Texas and Pacific Motor Transport Company's Adoption Notice M.F. I. C. C. No. 2, effective June 11, 1937.	T. & P. Motor Transport Company's Exhibit 7.
1588 82.	The Texas and Pacific Motor Transport Company's Adoption Notice M.F.-I.C.C. No. 3, effective June 11, 1937.	T. & P. Motor Transport Company's Exhibit 7.
83.	The Texas and Pacific Motor Transport Company's Adoption Notice M.F.-I.C.C. No. 5, effective September 5, 1938.	T. & P. Motor Transport Company's Exhibit 7.
84.	Certificate of Public Convenience and Necessity issued by the Commission dated November 23, 1948 to The Santa Fe Trail Transportation Company, Docket No. MC 30605.	T. & P. Motor Transport Company's Exhibit 88.
85.	Certificate of Public Convenience and Necessity issued by the Commission October 9, 1947 to Southwestern Transportation Company, Docket No. MC 59488.	T. & P. Motor Transport Company's Exhibit 86.
86.	Certificate of Public Convenience and Necessity issued by the Commission September 5, 1945 to Pacific Motor Trucking Company, Docket No. MC 78786.	T. & P. Motor Transport Company's Exhibit 87.

87.	Certificate of Public Convenience and Necessity issued by the Commission dated December 2, 1948 to Frisco Transportation Company, Docket No. MC 89913.	T. & P. Motor Transport Company's Exhibit 89.
88.	Certificate of Public Convenience and Necessity issued by the Commission dated September 7, 1948 to Burlington Truck Lines, Inc., Docket No. MC 107500.	T. & P. Motor Transport Company's Exhibit 90.

R. GRANVILLE CURRY
R. Granville Curry
Attorney for Appellee

1589 *Certificate of Service*

I hereby certify that I served the attached Statement by Appellee of Additional Parts of the Record to to be Printed upon appellants herein by mailing, on April 25, 1950, a copy thereof to the following persons, their attorneys:

Philip B. Perlman
Solicitor General
For the United States

Daniel W. Knowlton
Chief Counsel for Interstate
Commerce Commission

Frank C. Brooks
Counsel for Regular Common
Carrier Conference of
American Trucking Associations.

R. GRANVILLE CURRY
R. Granville Curry
Attorney for Appellee

Dated: April 25, 1950.

1590 (File Endorsement Omitted)

1591 In the Supreme Court of the United States
October Term, 1950.

No. 38

Stipulation Re Exhibits—Filed April 25, 1950

It is hereby stipulated by and between the parties that on the appeal in the above-entitled cause counsel for any party may refer, in brief or oral argument, to any original exhibit included in the record filed with this Court but not printed, with the same force and effect as if the same had been printed.

PHILIP B. PERLMAN
Solicitor General
For the United States

DANIEL W. KNOWLTON
Chief Counsel for Interstate
Commerce Commission

R. GRANVILLE CURRY,
Attorney for Appellee

1592 (File Endorsement Omitted)

1593 Supreme Court of the United States
Nos. 38 & 39, October Term, 1950.

Order noting probable jurisdiction—May 1, 1950.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are transferred to the summary docket and assigned for argument immediately following No. 654, United States *et al.* vs. Rock Island Motor Transit Company *et al.*

☆ U. S. GOVERNMENT PRINTING OFFICE: 697169 NO. 3....1950

In the United States District Court for the Northern District of Texas, Dallas Division

Civil No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT CO., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

STATEMENT AS TO JURISDICTION

(Filed Feb. 10, 1950)

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants, United States and Interstate Commerce Commission, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause.

OPINION BELOW

The uncorrected opinion of the District Court for the Northern District of Texas, Dallas Division, is reported in 87 F. Supp. 107. A copy of the amended opinion, findings of fact, conclusions of law and judgment are attached hereto as Appendix A.

880849—50——1

JURISDICTION

The judgment of the district court was entered on December 14, 1949.[1] A petition for appeal is presented to the district court herewith, to-wit, on February 10th, 1950. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101 (b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *United States* v. *Capital Transit Company,* 325 U. S. 357; *United States* v. *Detroit and Cleveland Navigation Company,* 326 U. S. 236; *United States* v. *Pierce Auto Freight Lines,* 327 U. S. 515.

QUESTION PRESENTED

Where the Interstate Commerce Commission has issued sixteen certificates of purchase and of convenience and necessity under Sections 5 (2) and 207 of the Interstate Commerce Act to a motor carrier wholly owned by a railroad, all of which certificates contain the provision that the Commission may impose, in the future, such further specific conditions as it finds necessary to restrict the motor carrier's operation to service which is auxiliary and supplemental to the rail

[1] The court filed an opinion on November 16, 1949. On November 23, 1949, the court filed an amended opinion, to which the Government objected. The findings of fact, conclusions of law, and judgment were filed on December 14, 1949.

service, may the Commission reopen such certificates to specify additional conditions confining the motor carrier to such supplemental service and prohibiting independent and competitive motor carrier operations.[2]

STATUTES INVOLVED

Sections 5 (2) (a), (b), 5 (9), 206, 207, 208 (a), 212 and 221 (b) (49 U. S. C. §§ 5 (2) (a), (b), 5 (9), 306, 307, 308 (a), 312 and 321 (b)) of the Interstate Commerce Act, as amended, are set forth in Appendix B hereto.

STATEMENT

Appellee, hereinafter referred to as Transport, is a wholly owned subsidiary of the Texas and Pacific Railway engaged in the motor transportation business. Prior to 1935, Transport engaged solely in a limited pick-up and delivery service for the railroad. From 1936 through 1942, Transport gradually established a motor carrier business extending over 1150 miles from New Orleans to El Paso, Texas and Lovington, New Mexico, which roughly parallels the lines of the Texas and Pacific Railway. This motor carrier route was acquired in segments, both by the purchase of other carriers and by the inception of new operations by Transport. As the segments were acquired, Transport applied to the Interstate Com-

[2] All the points raised in the Assignment of Errors are also presented. The Question Presented stated above sets forth the major issue.

merce Commission for approval and certification of the proposed purchases under Section 5 (2) (formerly 213) of the Interstate Commerce Act, or, in the case of originated operations, for a certificate under Section 207. From 1939 to 1942 the Interstate Commerce Commission issued to Transport 16 certificates of convenience and necessity, each of which covered a portion of Transport's route as it was acquired, and which together make up the integrated operation presently conducted by Transport.

Each of the 16 certificates contain various conditions upon the type of service to be conducted by Transport. All of the certificates, however, provide that the Commission reserves the right to add "such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service."

In 1941 Transport petitioned the Commission to reopen the certification proceedings covering that portion of Transport's route from Pecos to El Paso, a distance of 214 miles, for the purpose of determining its authority to transport freight. The Commission issued a report on March 21, 1942 (33 M. C. C. 38) recommending that certain conditions be imposed in the certificate. The Commission stayed this order and reopened the proceeding for further consideration of eight of Transport's certificates. The Commission then

issued a report on January 21, 1943 (41 M. C. C. 721) ruling that Transport was without authority to operate on the basis of all-motor rates or to participate in joint all-motor rates. Transport and the Railway filed a petition for reconsideration of this ruling, and for modification of certain of the Commission's tariff regulations which prevented the Railway from participating in joint rates with motor carriers. The Commission reopened the proceedings to include a reexamination of whether modification should be made in the conditions attached to all of Transport's sixteen certificates. Transport and the Railway then filed a petition requesting that the further hearing be cancelled. This petition was denied, and a hearing was held at which Transport asserted that it wished to maintain the status quo and refused to introduce any evidence, objecting to the questioning of its employees by the examiner. The Commission issued a report and order on January 22, 1948 (47 M. C. C. 753), in which it set forth five conditions to be imposed upon all of Transport's certificates, including the limitation that service was to be auxiliary and supplementary to rail service and that Transport could not carry shipments between or through more than one of certain key points (consisting of designated large cities on its routes). The report made clear that the limitation to auxiliary and supplemental service prohibited Transport from engaging in a general motor carrier business

at motor carrier rates, and that Transport was confined to carriage of railway freight at rail rates and on railway bills of ladings as incidental to a pick-up and delivery service for the railroad.

Transport petitioned for reconsideration and for vacation of the report and order. This petition was denied by the Commission on May 9, 1949.

Transport brought this action in the United States District Court for the Northern District of Texas, Dallas Division, under Title 28, United States Code, Sections 1336 and 2321 to review the ruling of the Commission. The district court set aside the reports and orders of the Commission of January 22, 1948 and May 9, 1949, one judge dissenting. The court found that the isssuance by the Commission of the certificates of purchase and of convenience and necessity granted to Transport the right to operate a trucking business at motor rates over the designated routes. Over the Government's objection, the court received additional evidence regarding the scope and nature of Transport's operations. The court found that Transport's activities are auxiliary and supplemental to the railway, and ruled that the Commission's action was a revocation of these certificates requiring a proceeding under Section 212 of the Interstate Commerce Act, and that, since the Commission had not followed this procedure, it had exceeded its authority under the

Act, and had confiscated Transport's property without due process of law.

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are similar to those raised by the *Rock Island Motor Transit Company* v. *United States and Interstate Commerce Commission* in the United States District Court for the Northern District of Illinois, in which an appeal was taken on January 27, 1950. These issues are of importance to the motor carrier and railroad industries and to the administration of the Interstate Commerce Act. The national transportation policy provides for the preservation of the inherent advantages of each form of transportation (49 Stat. 899; note to 49 U. S. C. 1). Section 5 (2) (b) of the Interstate Commerce Act, which reenacted in 1940 a provision formerly contained in Section 213 of the Act, authorizes acquisition of motor carriers by railroads only if the transaction will enable the railroad to use motor service to public advantage in the railroad's operation, and will not unduly restrain competition. The Commission's authority under the Act to supplement its earlier orders for the purposes of confining motor carriers controlled by railroads to non-competitive activities is in accord with the intent of Congress, as expressed in the national transportation policy and the provision in both the 1935 and 1940 Acts requiring the independent development of the

two means of transportation. The decisions of the Commission from the first enactment of motor carrier regulatory statutes have confined captive motor carriers to the performance of coordinate and supplemental services for the rail carriers, and these decisions have been sustained by the Supreme Court. The judgment of the district court is in direct conflict with this policy and contrary to provisions of the Act. In addition, the district court has refused to recognize the Commission's express authority, under its earlier certificates issued to appellee, to add further specific conditions confining Transport's motor carrier operations to auxiliary and supplemental service.

1. The Interstate Commerce Act provides for continuing supervision by the Commission of the operating activities of motor carriers in order to effectuate the national transportation policy. Transport's purchase transactions required, and received, Commission approval under Section 5 (2) (49 U. S. C. 5 (2)). Section 5 (9) specifically provides that "the Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph 5 (2), as it may deem necessary or appropriate." With respect to certificates of convenience and necessity issued pursuant to Section 207, Section 208 (a) (49 U. S. C. 308 (a)) provides that "there shall, at the time of issuance and from time to time thereafter, be attached to

the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require," and Section 221 (b) provides that Commission orders shall continue in force "until its further order." The Act thus contemplates that the Commission maintain a continuing check upon carriers in order to assure that they do not exceed the scope of activities permissible under the Act and the Commission's orders.

The conditional basis upon which the sixteen certificates were issued to Transport over the period of five years is thus in accord with the statutory authority of the Commission. During the process of Transport's gradual acquisition of disconnected segments of its present route, the Commission was under no statutory obligation to foresee every specific limitation that ultimately might be required to be placed upon Transport's service. It is sufficient that the Commission defined the type of service permitted, and later added more specific conditions when necessary to hold the carrier to the type of service originally authorized. "Because the applications were not considered as parts of an overall scheme of establishing a connected system of routes, we attached to each certificate as it was granted only those conditions which we considered at the time to be necessary * * * Without exception, however * * * we reserve the right in the future

to impose such additional revised conditions as we might find necessary in order to restrict applicant's operation to a service auxiliary to or supplemental of rail service" (47 M. C. C. 753, 755). Transport's authority was limited by this restriction both in the case of the purchase transactions which, under Section 5 (2) (b) were "subject to such terms and conditions and such modifications as [the Commission] shall find to be just and reasonable" and in the certificates issued under Section 207. This reservation was a clear expression of the terms upon which Transport's authority to engage in motor operations was granted, and implemented the limitations required by the Act and the duty of the Commission to supervise the carrier's continuing performance of these terms and conditions.

2. The authority of the Interstate Commerce Commission to impose upon motor carriers the type of conditions contained in its order of January 22, 1948, is settled. In *Interstate Commerce Commission* v. *Parker Motor Freight,* 326 U. S. 60, 63, the Supreme Court notes the appropriateness of such restrictions:

> As a further assurance that [the carrier] might not inadvertently have received privileges beyond the Commission's intention to grant, a right was reserved by the Commission to impose such further specific conditions as it might find necessary in the future to restrict [the carrier's] operation

"to service which is auxiliary to, or supplemental of rail service."

And at pages 70–72, the Court discusses the very type of key-point restriction imposed in the instant case, and the authority of the Commission to add additional conditions if necessary at some subsequent time, to prevent undue competition by the captive motor carrier:

> Certificates of the general character of the one proposed by the Commission for [the carrier] have been granted heretofore. The motor service was not the normal over-the-road type but restricted to services auxiliary or supplemental to the rail service. In order to restrict motor carriers which were operated by railroads to this coordinated service, the Commission customarily inserted a provision in the order granting the application that the motor shipments must have prior or subsequent movement by rail. E. G. *Kansas City Southern Transport Co., Common Carrier Application,* 10 M. C. C. 221, 240. The rail carriers pointed out, however, that this restriction interfered with the efficiency of their operations, since commodities might be offered them at one way-station for transportation to another way-station within ordinary motoring distance. In such a case a way-freight train would be required. It was to meet this situation that the key-point or break-bulk rule, which is employed here, was developed. *Kansas City South-*

ern Transport Co., Common Carrier Application, 28 M. C. C. 5, 9, 11, 22 (par. 3), 25 (App. B).

This key-point requirement is one factor of differentiation between this certificate and the normal over-the-road motor certificate of convenience and necessity. Other differentiations are found in the limitation of service to rail station points and the condition that the Commission reserved the right to impose such other requirements as might be found necessary to restrict the rail subsidiary to coordinated rail service instead of permitting general competition with motor carriers in over-the-road service.

* * * If the Commission later determines that the balance of public convenience and necessity shifts through competition or otherwise, so that injury to the public from impairment of the inherent advantages of motor transportation exceeds the advantage to the public of efficient rail transportation, the Commission may correct the tendency by restoration of the rail movement requirement or otherwise.

To the same effect is *American Trucking Association* v. *United States*, 326 U. S. 77.

3. Appellee's contentions that it received a vested right to engage in unlimited and competitive motor carrier operations by virtue of the issuance of these certificates is thus without merit. Even aside from the caution contained in Section 207 of the Act that "No certificate * * *

shall confer any proprietary or property rights in the use of the public highways," the short answer is that Transport was never authorized by the Commission to perform more than a service which is auxiliary and supplemental to railway service. In engaging in all-motor competitive service Transport exceeded the limits of its charter and, by requiring it to conform to these limitations, the Commission took nothing from the appellee. Not only did each of the sixteen certificates specifically limit Transport's activities to auxiliary and supplemental service, but the requirements of the statute and the consistent policy of the Commission were sufficient warning of the prohibition. Prior to the issuance of any of these certificates to Transport the Commission established, in *Pennsylvania Truck Lines, Inc.—Control—Barker Motor Freight, Inc.*, 1 M. C. C. 101, 5 M. C. C. 9 and 49, that under the limitations imposed by the Act, captive motor carriers would not be permitted to engage in independent and competitive activities, and the Commission has followed this policy consistently. *Kansas City S. Transport Company, Inc., Com. Car. Application*, 10 M. C. C. 221; *Illinois Central Railway Company, Common Carrier Appl.*, 12 M. C. C. 485, 18 M. C. C. 721; *Missouri Pacific R. Company, Extension of Operations—Illinois*, 19 M. C. C. 605; *Willett Company of Ind., Inc., Extension—Illinois, and Kentucky*, 21 M. C. C. 405.

4. Further, the district court erred in permitting the introduction of evidence as to the scope and nature of Transport's operations. Appellee raised no issues in the district court upon which it did not have full opportunity to be heard and to present evidence before the Commission. The scope of judicial review does not include the introduction of new evidence which could have been, but was not, presented to the Commission. *New York* v. *United States,* 331 U. S. 284, 334–336. The Commission did not refuse to receive evidence; it was appellee which refused to tender evidence. See *Railroad Commission of California* v. *Pacific Gas Company,* 302 U. S. 388; *Baltimore and Ohio Railroad Company* v. *United States,* 298 U. S. 349.

It is submitted that the decision of the district court fails to recognize the authority granted the Commission by the Act to maintain compliance by carriers with the limitations imposed by the Act, and that it authorizes the appellee to engage in activities prohibited by the Act and the Commission's general policy under the Act. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted.

(S) PHILIP B. PERLMAN,
Solicitor General.

(S) DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

APPENDIX A

In the District Court of the United States for the Northern District of Texas, Dallas Division

No. 3696—Civil

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPLICATION TO ENJOIN INTERSTATE COMMERCE COMMISSION'S ORDER

I dissent.

(S) BEN C. DAWKINS.

J. T. Suggs, D. L. Case, Robert Thompson, William R. McDowell, John C. Robertson, J. L. Lancaster, Jr., W. O. Reed, Claude Williams, all of Dallas, Texas, for the petitioner.

H. L. Underwood, Assistant Chief Counsel Interstate Commerce Commission, Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Washington, D. C., Frank B. Potter, United States Attorney, Fort Worth, Texas, O. M. Harrell, Assistant United States Attorney, Dallas, Tex. for the United States.

E. J. Hickey, Jr., Washington, D. C., Harmon L. Watkins, Dallas, Texas, of counsel.

Mulholland, Robie, McEwen & Hickey, Washington, D. C. for the Railway Labor Executives Assn., Intervenor.

Callaway & Reed, Dallas, Texas, for Regular Common Carrier Conference of the American Trucking Associations, Inc., Intervenor.

Before Circuit Judge HOLMES and District Judges DAWKINS and ATWELL

ATWELL, District Judge:

The petitioner, hereafter known as "Transport," is a corporation with its stock wholly owned by the Texas and Pacific Railway Company.

The Texas and Pacific Railway Company, hereinafter designated, "Railway," is a corporation created by virtue of an Act of Congress.

Transport is authorized to engage in the business of a common carrier by motor vehicle, or, by any means whatsoever, and partly by one means and partly by another, and by arrangement, or, contract with other common carriers. It may lease, contract with, or, otherwise deal in truck, bus, state, or, other transportation systems.

It has carried on this business for many years, subject to the provisions of the Interstate Commerce Commission Act. Such activity has been both interstate and intrastate, in the states of Texas, Louisiana, and New Mexico. Its intrastate business has been under common carriers' certificates issued by the respective states of Texas and Louisiana. It does not operate intrastate in the state of New Mexico. It has engaged in interstate business in Texas, New Mexico and Louisiana under certificates required by purchase and original application which were issued by the

Interstate Commerce Commission, from time to time.

After the acquisition of authorization to so engage, it invested large sums of money therein. It claims that the cost of certificates authorized by the Commission, amounted to $96,674.18. That in addition to this cost, it has invested heavily in equipment, and transportation facilities for the proper maintenance and prosecution of this business to the extent of $270,257.80. That it is earning gross revenues in interstate transportation in the approximate sum of $20,000 per month, and approximately $150,000 per month from intrastate operation.

That the purpose of its organization, in 1929, was to haul less-than-carload freight shipments, known in its petition as "merchandise traffic," to, from and between stations on the line of Railway. That its schedule of rates on such traffic between such local stations was the same as that maintained by Railway, and in that year it published station-to-station rates on said merchandise, which were served by Railway, corresponding to those of motor carriers, which rates included pick-up and delivery service. It issued bills of lading in its own name, but the transportation, except for local pick-up and delivery service was performed by Railway under arrangements between it and Transport.

In November, 1935, Transport negotiated common carrier-over-road operations between Monahans, Texas and Lovington, New Mexico.

In 1935 it secured authority from the Commission to purchase certificates of convenience and

necessity from other common motor carriers, which had been established prior to the Motor Carrier Act of 1935, and commonly known as "grandfather rights."

It also purchased the same sort of rights from W. A. Johnson, Johnson Motor Lines, and the Fort Worth Warehouse and Storage Company. These all related to motor carriers along the line between Dallas and Abilene and Big Spring, Texas.

In 1937 it purchased from the Southern Transportation Lines common carrier and grandfather rights betwen Dallas and Wills Point, and Gladewater, Texas and Shreveport, Louisiana. That along the routes of these certificates are such important distribution centers, shipping points, designations and gateways as Dallas, Fort Worth, Abilene, Sweetwater and Big Spring, Texas and Shreveport, Louisiana. That all of the interstate traffic handled by Transport either originates in or terminates on, or, moves over such routes. These certificates were validly issued under Sec. 207 of the Motor Carrier Act of 1935 and Part 2 of the Interstate Commerce Commission Act of 1940.

That such original and purchased certificates had no such conditions attached to them by the Commission as the Commission determined in its orders of January 22, 1948, and May 2, 1949. Such orders, Transport claims, ingraft on the certificates which it owns, certain conditions which destroy, or materially diminish the common carrier character of such rights and constitutes a taking of private property for a public pur-

pose without just compensation contrary to
5th Amendment.

It also claims that it had no notice of a hea
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purchased granted "grandfather rights," and claims that they were limited to operations "auxiliary to, or, supplementary of, rail carrier service." It admits the orders and reports pleaded, and that they are the best evidence of its findings, conclusions and requirements. It denies that any such orders, or, requirements are arbitrary, or, the reversal of former policy with respect to the operation authority granted to Transport. It denies that such orders are unlawful. It denies that Transport will suffer irreparable damage unless its orders of January 22, 1948 and May 9th, 1949, are set aside.

The answer, therefore, makes an issue, upon which testimony was considered appropriate, with reference to investment; carrying on the business before Motor Carrier Act; as to whether the certificates were conditioned "auxiliary to, or, supplemental of said carrier services;" damages, notice of hearing and a proper hearing.

Upon these controverted issues the testimony discloses that the allegations as to the controverted isues, made in the petitioner's complaint, are entirely supported by the testimony.

As to a hearing there appear cross currents in 302 U. S. 388, spoken of a little later, and, 331 U. S. 334–336, cited by Railway, as to the inability of this court to have a hearing on this question. 331 U. S. treated only the rate, not the question of a hearing in the constitutional sense.

The defendant, in some of the exhibits, and in its own pleadings, and particularly in its report on the "further hearing by Div. 5," seems to think, and so expressed the thought that Trans-

port's line of service, though justly and reasonably and legally authorized by both state and nation, was too long, and that it made one system. We may appropriately ask, may such a line, 1150 miles long, validly acquired from time to time, be summarily broken into parts, and its independence destroyed? Does the Act justify such destruction?

The wisdom of Congress is displayed in the addition to the Motor Carrier Act which permitted such a service to be organized by and for the service of the Railroad. The main purpose of the supervision by Commission is to save the shipping public from the charge of exorbitant rates, and the nuisance of a monopolizing combination.

The rates charged and filed by Transport were in complete accord with other motor carriers. Highly satisfactory to such shippers and receivers of freight as are represented by the Chambers of Commerce in Dallas and Fort Worth as evidenced by their respective spokesmen.

This is not to say that the granting of a certificate places the holder thereof beyond the power of the Commission to supervise and to continue to inspect its service. But, it is to say that the holder of the certificate must be recognized as the holder of property and that such property may not be taken from it without due process and with an arbitrary or unreasonable motive.

The Supreme Court in *Railroad Commission* v. *Pacific Gas Co.*, 302 U. S. 388, treated this question at considerable length, and stated that the

utility had the right to a fair and open hearing, as one of the rudiments of fair play assured to every litigant by the federal Constitution.

If rates, said the court in that case, are confiscatory, then the jurisdiction of the Commission is at once appropriately invoked. Courts do not have a right to question the correctness of the method, or, reasoning adopted by a regulating agency, but the court does have a right to determine whether, or, not the rate will result in confiscation.

The soul of the controversy here is the result that the order has. There is no debate here over the question of inappropriate charges, or, tariff rates, or, combinations, or, monopolies. The question here is *the breaking up of a system that has been validly acquired, for a legal purpose, and which will result in confiscation, and, irreparable damage to the complaining carrier.*

There are countless other decisions impinging upon the theories that are involved in this interesting controversy, such as—

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terms, and such implication is negatived by the discretion to grant certificates conferred on the Commission by the Act."

Mr. Justice Douglas, in his dissenting opinion in which Justices Black and Rutledge joined, make this position of the court so clear that one cannot escape.

Now, the very simple academic thought arises, what, in view of the reasoning of the Supreme court, in the case just spoken of, does "auxiliary and supplemental to," continually used by the Commission in the present case, mean? And, by what authority does the Commission read it into the certificates issued to the plaintiff?

The reasoning of the court in the *Parker* case shows that the very action of the Commission, under the Act, was for the purpose of being "supplemental and auxiliary," of the railroad carrier.

The facts here show that the railroad carrier owns all the stock in Transport, and, with that ownership, we must concede, engineered the ultimate securing of the complete 1150 miles covered by Transport, which, nearly all of the way, was "auxiliary to and supplemental of" the Railroad transportation. Transport's line went into New Mexico, as a feeder for the same system.

The dictionary defines "auxiliary," to mean, "helping or aiding; giving support; subsidiary or additional supplementary power. A helper or aid; a confederate; an ally as in war."

Almost as simple, is the definition of the word, "supplemental," which is, "additional; or, have the nature of or forming a supplement; as, "he had come upon supplementary sources of income."

We, therefore, find that Transport was "auxiliary to and supplemental" of Railway. That is why Railway assisted in its creation. That is why Railway put up the money to buy the stock and to get it in working order.

That leaves two questions:

(a) Is such action monopolizing? If so, that question was for the determination of the Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. That question was not for the court. It could not be a question for the Commission.

(b) The last question is whether, after having permitted the acquisition of these certificates, the Commission may issue orders which stifle, and, in reality, destroy the value of such certificates. No one learned in the law could permit an affirmative answer to that question. It is a taking of private property without due process. It is confiscation. It is destruction.

Glancing once more at the provisions of the statute, we find that Sec. 203 (a) (14), defines common carrier by motor vehicle. The attempt by the Commission to restrict the term, "motor carrier," would be an usurpation of power. So, also, there may be no lawful restriction of rates. Neither does Sec. 208 (a) while broad, permit a modification of a separate provision of the Act itself. It has been said that Sec. 208 (a) means that the Commission shall preserve substantial parity between future and past operations. A valid grant cannot be affected by the addition of an invalid condition.

In truth, conditions and limitations granted under Sec. 208 (a) must be reasonable, and they must be required by public convenience and necessity, or, for the purpose of carrying out the requirements established under Sec. 204 (a) (1) and (6). Conditions must conform to the requirements of Sec. 208, itself, and must be consistent with and fall within the specific statutes applicable to common motor carriers. Thus, while the Commission might prescribe the points to be served, it could not forbid the participation in joint rates and through routes for the simple reason that such a provision would be inconsistent with the wording of Sec. 216 of the Act.

Nor can revocation be accomplished in any way except under Sec. 212. It cannot be brought about by the imposition of terms and conditions, or, limitations. The Commission, itself, said in *Quaker City Bus Co.* v. *Black Hawk Lines, Inc.*, that, "The existence of a certificate creates a vested motor carrier status which stays in force and effect * * * until the certificate is revoked in accordance with the procedure prescribed in Sec. 212 (a)."

If we give the Commission power to revoke by terms, limitations and conditions, by an attempted stretch of Sec. 208 (a), then we make Sec. 212 (a) utterly useless. Each Section has its purpose. Each Section expresses the intent of the Congress. Such intent must govern.

The permanent injunction will issue as prayed, and a judgment in accordance will be drawn and forwarded for signatures.

Done at Dallas, Texas, this the 11th day of November, 1949.

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Before Circuit Judge Holmes and District Judges Dawkins and Atwell

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After the acquisition of authorization to so engage, it invested large sums of money therein.

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That the purpose of its organization, in 1929, was to haul less-than-carload freight shipments, known in its petition as "merchandise traffic," to, from and between stations on the line of Railway. That its schedule of rates on such traffic between such local stations was the same as that maintained by Railway, and in that year it published station-to-station rates on said merchandise, which were served by Railway, corresponding to those of motor carriers, which rates included pick-up and delivery service. It issued bills of lading in its own name, but the transportation, except for local pick-up and delivery service was performed by Railway under arrangements between it and Transport.

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will suffer irreparable damage if such orders are not restrained and that its loss will be approximately $240,000 per year, and, in addition, would deprive Transport of the value of its investments in the certificates aggregating $96,674.18, as well as of its physical property devoted to interstate transportation in the sum of $25,000. That its business in 1948 accorded it a net operating profit, before taxes, of $118,808.06, and a net profit of $69,959.41.

It denies that it has any complete remedy at law which is speedy and adequate. It asks for temporary restraint and for the impanelling of a three-judge court, and, a permanent injunction.

Attached to the petition are informative schedules, "A", "B" and "C". "A" being a report of hearings; "B" showing certificates, and "C" showing a map of Transport's and Railway's system.

The answer of the Commission concedes jurisdiction and admits the purpose of the suit. It admits the acquisition of the certificates, and that Transport has conducted operations in interstate commerce by virtue of the same, but, it contends that the certificates contained restrictions in respect "to operations or other matters." It does not answer as to operations by Transport before Motor Carrier Act. It denies that the certificates purchased granted "grandfather rights," and claims that they were limited to operations "auxiliary to, or, supplementary of, rail carrier service." It admits the orders and reports pleaded, and that they are the best evidence of its findings, conclusions and requirements. It denies that any such orders, or, re-

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Railway put up the money to buy the stock and to get it in working order.

That leaves two questions:—

(a) Is such action monopolizing? If so, determination of that question was provided for by Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. It required the Commission to determine the question before authorizing such consolidation or purchase, and in this case the Commission did determine the question in the negative and authorized the purchases here involved.

(b) The last question is whether, after having permitted the acquisition of these certificates, the Commission may issue orders which stifle, and, in reality, destroy the value of such certificates. No one learned in the law could permit an affirmative answer to that question. It is a taking of private property without due process. It is confiscation. It is destruction.

Glancing once more at the provisions of the statute, we find that Section 203 (a) (14), defines common carrier by motor vehicle. The attempt by the Commission to restrict the term, "common carrier," would be an usurpation of power. So, also, there may be no lawful restriction of rates. Neither does Section 209 (a) while broad, permit a modification of a separate provision of the Act itself. It has been said that Section 206 (a) means that the Commission shall preserve substantial parity between future and past operations. A valid grant cannot be affected by the addition of an invalid condition.

In truth, conditions and limitations granted under Section 208 (a) must be reasonable, and they must be required by public convenience and necessity, or, for the purpose of carrying out the requirements established under Section 204 (a) (1) and (6). Conditions must conform to the requirements of Section 208, itself, and must be consistent with and fall within the specific statutes applicable to common motor carriers. Thus, while the Commission might prescribe the points to be served, it could not forbid the participation in joint rates and through routes for the simple reason that such a provision would be inconsistent with the wording of Section 216 of the Act.

Nor can revocation be accomplished in any way except under Section 212. It cannot be brought about by the imposition of terms and conditions, or, limitations. The Commission, itself, said in *Quaker City Bus Co.* v. *Black Hawk Lines, Inc.*, that, "The existence of a certificate creates a vested motor carrier status which stays in force and effect * * * until the certificate is revoked in accordance with the procedure prescribed in Section 212 (a)."

If we give the Commission power to revoke by terms, limitations and conditions, by an attempted stretch of Section 208 (a), then we make Section 212 (a) utterly useless. Each Section has its purpose. Each Section expresses the intent of the Congress. Such intent must govern.

The permanent injunction will issue as prayed, and a judgment in accordance will be drawn and forwarded for signature.

Done at Dallas, Texas, this the 11th day of November, 1949.

In the District Court of the United States for the Northern District of Texas, Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled suit came on to be heard on November 11, 1949 before a specially constituted court of three judges consisting of the Honorable Edwin R. Holmes, Circuit Judge; the Honorable Ben C. Dawkins, District Judge; and the Honorable Wm. H. Atwell, District Judge and supplementing the findings made in the opinion of the majority of the Court by the Honorable Wm. H. Atwell, District Judge, the following ultimate facts are found:

1. The petitioner, hereafter called "Transport," is a corporation wholly owned by The Texas and Pacific Railway Company and under appropriate charter powers and certificates of authority, is operating as a common carrier by motor vehicle in both intra- and interstate commerce over a series of connected routes generally paralleling its parent railroad and extending from New Orleans, Louisiana to El Paso, Texas.

2. Transport carriers on its interstate business under sixteen common carrier certificates issued to it by the Interstate Commerce Commission; thirteen of which were issued under Section 207

of the Interstate Commerce Act on Transport's original application, and three of which were issued under Sections 206 and 213 (now Section 5) of said Act, evidencing operating rights purchased by Transport with Commission approval from other common carrier motor carriers who were so operating on and prior to June 1, 1935.

3. With exceptions not important here, each of the certificates in question at the time of issuance carried a condition prohibiting Transport from serving or interchanging traffic at any point not a station on the line of its affiliated railways, and eleven of the Section 207 certificates contained a condition limiting the authorized service to that which was "auxiliary to or supplemental of train service" of the affiliated railways. All of the certificates contained a provision reciting that the certificate should be subject to such further conditions as the Commission might thereafter find necessary in order to restrict the operation to service "auxiliary to or supplemental of train service."

4. At the time of their original use in the several certificates, the words "auxiliary to or supplemental of train service" did not imply more than a restriction limiting the motor carrier service to points on the lines of the parent railroad and its rail subsidiaries; and when the several certificates were issued, the Commission did not intend that the quoted words should preclude Transport from issuing its own bills of lading and serving the public generally on motor rates, including joint motor rates on through routes established with other motor carriers.

5. On January 21, 1943, the Commission issued a report with respect to eleven of Transport's Section 207 certificates, prohibiting Transport from participating in certain motor carrier tariffs and declaring that the condition limiting operations to service "auxiliary to or supplemental of" train service confined it to carriage of shipments on rail bills of lading at rail rates, and precluded its participating in joint motor rates with other connecting motor carriers. On January 22, 1948, pursuant to a hearing held on its own motion on October 17, 1944, the Commission issued a report and order repeating its 1943 interpretation of the words "auxiliary to or supplemental of train service" and imposing that condition on Transport's five certificates which did not contain it originally, including the three certificates issued under Sections 206 and 213 of the 1935 Act. This interpretation of the quoted phrase was not the Commission's original intent when the several certificates were issued, but rather reflected a change in the Commission's policy in such matters which had developed after the certificates were issued.

6. Defining 'key points" as points between which, or through, to or from more than one of which, shipments might not be transported, the Commission in its 1948 report and order designated New Orleans, Alexandria and Shreveport, Louisiana, and Fort Worth-Dallas (considered as one), and Abilene, Texas, and Texarkana Tex.-Ark., as "key points" with respect to fourteen of the certificates to which no such restriction had originally attached, thus breaking Transport's permissible operations into a number of

short hauls. Three of such certificates specifically authorized operations between New Orleans and Shreveport, La., between Dallas and Abilene, and between Big Spring and Pecos, Texas, respectively.

7. Prior to the Commission's 1943 report Transport issued its own bills of lading and participated in motor carrier tariffs under its Section 207 certificates as well as its "purchase" certificates, and still does so under the five certificates (including the three "purchase" certificates) which were not included in the 1943 report, all with full knowledge of the Commission.

8. Transport has invested $96,674.18 in acquiring its certificates, including an aggregate purchase price of approximately $87,000.00 for the three certificates issued under Sections 206 and 213 of the 1935 Act. The interstate certificates have an aggregate present market value of approximately $65,000.00. If the Commission's 1948 orders were carried into effect, the value of the certificates would be destroyed. In addition Transport would lose some $240,000.00 per annum in revenue and its presently profitable operation would henceforth produce a loss.

9. The Commission gave Transport notice of its October 17, 1944 hearing by orders reciting only that its purpose was—

> to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates * * *

Representatives of competing motor carriers, the shipping public and railway labor participated in the hearing and inquired of the hearing officer

its specific purpose. The examiner refused to elaborate on the notice and stated that in the absence of any protest, probably no change would be made in Transport's certificates. Thereupon the other participants joined Transport in requesting that the hearing be cancelled and the proceedings discontinued. The request was refused.

10. In approving Transport's purchase of each of the certificates issued under Sections 206 and 213 of the 1935 Act (Sections 206 and 5 (2) (b) of the 1940 Act), the Commission found that the transaction would be consistent with the public interest, would enable the affiliated railroad to use motor service to public advantage in its operations, and would not result in undue restraint of competition; and the Commission has received no contrary evidence on these points subsequently.

11. The Commission has received no evidence of facts specified as cause for revocation of the certificates under Section 212 (a) of the Act, and has neither instituted nor entertained any proceedings under that section.

CONCLUSIONS OF LAW

We conclude as matters of law:

1. The Commission's orders herein involved have the effect of revoking, or partially revoking Petitioner's interstate common carrier certificates, in violation of the terms of the Interstate Commerce Act, and particularly Section 212 (a) thereof.

2. Said orders are confiscatory of Petitioner's property in violation of the Fifth Amendment of the Constitution of the United States.

3. In substantially diminishing Petitioner's operating rights which it had purchased from other motor carriers in bona fide operation on and prior to June 1, 1935, covered by certificates in the Commission's proceedings numbered sub-nos. 5, 6 and 8, the Commission's said orders are violative of the terms of the Interstate Commerce Act and particularly Section 206 (a) thereof.

4. In restricting Petitioner to carriage of shipments on rail bills of lading, for specified railroads, and precluding it from dealing directly with the public generally, said orders are violative of the terms of the Interstate Commerce Act and particularly Sections 203 and 207 thereof.

5. In restricting Petitioner to carriage of shipments at rail rates, and precluding it from utilizing motor rates, said orders are violative of the Interstate Commerce Act and particularly Sections 216 and 217 thereof.

6. In precluding Petitioner from interchanging freight with other common carrier motor carriers on through routes under joint motor rates, said orders are violative of the Interstate Commerce Act and particularly Section 216 thereof.

7. In imposing conditions on Petitioner's certificates which would have the effect indicated in the several foregoing conclusions, said orders are violative of the Interstate Commerce Act and particularly Section 208 (a) thereof.

8. Said orders of the Commission, in imposing additional conditions on Petitioner's certificates, and in changing the interpretation of conditions originally imposed on some of said certificates, are wholly unsupported by evidence.

9. Petitioner was not accorded due process of law in the proceedings culminating in the Commission's entry of said orders.

Done at Dallas, Texas this 6th day of December, 1949.

(S) EDWIN R. HOLMES,
United States Circuit Judge.
(S) WM. H. ATWELL,
United States District Judge.
(S) ——— ———,
United States District Judge.

From the foregoing conclusions of law I dissent.

(S) BEN C. DAWKINS,
United States District Judge.

In the District Court of the United States for the Northern District of Texas, Dallas Division

Civil No. 3696

The Texas and Pacific Motor Transport Company Petitioner, *v.* the United States of America and Interstate Commerce Commission Defendants

JUDGMENT

On the 11th day of November, 1949, the above entitled and numbered cause came on for trial on petitioner's prayer for a permanent injunction against the defendants, United States of America and Interstate Commerce Commission, to enjoin, set aside, annul and suspend those certain orders of the Interstate Commerce Commission dated January 22, 1948 and May 9, 1949, issued

in its proceedings entitled "The Texas and Pacific Motor Transport Company, Common Carrier Application" and bearing its docket No. MC-50544 (including Sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22). The cause came on before this statutory three-judge District Court composed of the Honorable Edwin R. Holmes, Circuit Judge, the Honorable Benjamin C. Dawkins, District Judge, and the Honorable Wm. H. Atwell, District Judge, duly constituted and assembled in accordance with the requirements of statute. The defendants having been served with process as provided by law and having entered their appearance herein, and the parties having stipulated in writing that the trial on such date would be on petitioner's prayer for permanent relief and that the order entered thereon would be the final judgment of the Court, came the petitioner and the defendants and intervenors and each of them by and through their attorneys, respectively. Each of the members of the three-judge Court being present and having read the pleadings of the parties and having heard the evidence and the argument of counsel, a written opinion making findings of fact and conclusions of law was prepared by the Honorable Wm. H. Atwell, in which he was joined by the Honorable Edwin R. Holmes, the Honorable Benjamin C. Dawkins, dissenting, and such opinion was entered as the opinion of the majority of the Court. Additional findings of fact and conclusions of law supplementing those made in the Court's opinion having been made and entered, upon such findings of fact and

conclusions of law it is hereby *ordered, adjudged and decreed as follows:*

1. The written opinion of the majority of the Court and the supplemental findings of fact and conclusions of law shall be and they are hereby together made the findings of fact and the conclusions of law required by the rules of procedure.

2. That the orders of January 22, 1948, of the Interstate Commerce Commission, by Division 5, and of May 9, 1949, by the entire Commission, in the Commission docketed and entitled "No. MC–50544 (including Sub. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22) The Texas and Pacific Motor Transport Company Common Carrier Application," be, and they are hereby permanently enjoined, set aside, annulled and suspended insofar as said orders impose on petitioner's existing certificates of public convenience and necessity any conditions which were not attached to said certificates on issuance, and insofar as said orders preclude petitioner from:

a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;

b. Interchanging traffic with other common carrier motor carriers on joint motor rates;

c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;

d. Transporting shipments, under its interstate certificates of public convenience and necessity issued in Interstate Commerce Commission Docket MC–50544 and Sub. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 19 and 22, between any of the fol-

lowing points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Texarkana, Tex.-Ark., Fort Worth, Dallas, Abilene and Monahans, Texas;

and insofar as said orders confine petitioner to utilization of railroad rates.

3. That the defendants United States of America and Interstate Commerce Commission be and they are hereby permanently enjoined from imposing any of the conditions prescribed in its order of January 22, 1948, on any of petitioner's existing certificates of public convenience and necessity not so restricted on issuance and from interpreting or enforcing said orders of January 22, 1948, and May 9, 1949, and the conditions imposed on petitioner's certificates in such manner as will prohibit petitioner from:

a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;

b. Interchanging traffic with other common carrier motor carriers on joint motor rates;

c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;

d. Transporting traffic to, through, from or between any so-called "key points" on that part of its route covered by interstate certificates of public convenience and necessity, to which no "key point" restriction attached on issuance of such certificates,

or in such manner as will restrict petitioner to ship on rail rates or on railroad bills of lading.

4. That petitioner do have and recover of and from defendants costs of this action and have execution therefor.

Dated at Dallas this 14th day of December 1949.

(S) EDWIN R. HOLMES,
Circuit Judge.

(S) WM. H. ATWELL,
District Judge.

I dissent.

(S) BEN C. DAWKINS,
District Judge.

Approved as to form:

(S) WILLIAM D. MCFARLANE,
Special Assistant to the Attorney General.

(S) ALLEN CRENSHAW,
Assistant Chief Counsel,
Interstate Commerce Commission.

(S) J. T. SUGGS,
Attorney for Petitioner.

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APPENDIX B

The pertinent provisions of the Interstate Commerce Act, as amended, are as follows:

Section 5 (2) (a) and (b) (49 U. S. C. §§ 5 (2) (a) and (b))

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or

carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided,* That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

Section 5 (9) (49 U. S. C. § 5 (9))

The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate.

Section 206 (49 U. S. C. § 306)

(a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 210, if any such carrier of predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section

and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier

by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

Section 207 (49 U. S. C. § 307)

(a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways.

Section 208 (a) (49 U. S. C. § 308 (a))

(a) Any certificate issued under section 206 or 207 shall specify the service to be

rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

Section 212 (49 U. S. C. § 312)

(a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked,

in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days to be fixed by Commission, with a lawful order of the Commission, made as provided in section 204 (c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further,* That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of section 206, 209, or 211, or by virtue of the second proviso of section 206 (a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 211 (c), 217 (a), or 218 (a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(b) Except as provided in section 5, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

Section 221 (b) (49 U. S. C. § 321 (b))

(b) Except as otherwise provided in this part, all orders of the Commission shall take effect within such reasonable time, not less than thirty days, as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

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In the 1950

District Court of the United States

For the Northern District of Texas,
Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants.

STATEMENT AGAINST JURISDICTION, MOTION TO DISMISS OR AFFIRM APPEAL AND BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL.

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In the

District Court of the United States

For the Northern District of Texas,
Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants.

STATEMENT AGAINST JURISDICTION

To the Honorable Supreme Court of the United States:

A statutory three-judge district court for the Northern District of Texas in these proceedings, permanently enjoined two orders of the Interstate Commerce Commission. The enjoined orders were issued on January 23, 1948, and May 9, 1949,* and would revoke sixteen common carrier motor carrier certificates previously issued by the Commission to The Texas and Pacific Motor Transport Company. The District Court filed an opinion and made supplemental findings of fact and conclusions of law which to-

* The order of May 9, 1949, was one refusing to disturb the order of January 23, 1948.

gether with the judgment are, for convenience, appended hereto as Exhibits "A",* "B" and "C", respectively. Defendants, United States of America and Interstate Commerce Commission, as well as the intervenor, Regular Common Carriers Conference of American Trucking Associations, Inc., are appellants herein.

Appellee, The Texas and Pacific Motor Transport Company, is now and for a number of years has been operating in interstate commerce as a common carrier of property by motor vehicle pursuant to the authority of its sixteen common carrier certificates. Thirteen of such certificates were issued to appellee under Section 207 of the Motor Carrier Act of 1935 and of the Interstate Commerce Act on a showing of public convenience and necessity. Three of its certificates represent "grandfather rights" perfected by appellee's vendors under Section 206 of the Motor Carrier Act of 1935 and acquired by purchase authorized by the Commission under Section 213 of said Act. (Now 49 U. S. C. A., 5).

On issuance, eleven of appellee's certificates restricted it to the furnishing of transportation that is "auxiliary to or supplemental of train service." The Commission's order of January 23, 1948, would impose an identical restriction on appellee's remaining five certificates. Such order would also impose "key points" on three of appellee's certificates not so restricted on issuance. As is more fully developed in the accompanying brief, the latter device shortens the

* The District Court's corrected opinion as entered.

routes originally authorized by those certificates. When issued, all sixteen of appellee's certificates contained a purported reservation to the Commission of the right to impose such further conditions as it might thereafter find necessary to restrict appellee's operations to those "auxiliary to or supplemental of train service." Appellants contend that such purported reservation authorized the Commission to alter appellee's certificates in the manner above described. The Commission's order of January 23, 1948, stated, and appellants now assert, that the phrase "auxiliary to or supplemental of train service" as used both in the restriction and the reservation, always implied that:

1. Appellee shall not use its own motor rates;

2. Appellee shall not participate in through routes under joint motor rates;

3. Appellee must use rail rates;

4. Appellee shall not issue its own bills of lading;

5. Appellee shall not hold itself out to the general public to engage in the transportation of property of any class in interstate commerce; and

6. Appellee shall transport property for only specified railroads.

Appellants allege, therefore, that the order of January 23, 1948, does not revoke appellee's certificates, that it merely particularizes the limitations inherent in the phrase "auxiliary to or supplemental of train service."

Appellee asserts that the phrase "auxiliary to or supplemental of train service" when originally imposed on its

certificates did not have the meaning now ascribed to it by appellants. On this narrow fact issue the District Court agreed with appellee and found that the phrase as originally used implied no more than a limitation of appellee's motor service to points on the lines of appellee's parent railroad and its rail subsidiaries; a geographic limitation. The Court found that the phrase did not restrict appellee with respect to its rates and the type of service to be performed. The Court also found that the order of January 23, 1948, redefined the phrase for the purpose of executing a change in the Commission's policy developed after appellee's certificates were issued.

The proceedings culminating in the orders of January 23, 1948, and May 9, 1949, were instituted by the Commission on its own motion. Such proceedings were not under 49 U. S. C. A., 312(a). No proceedings have been had under such section of the Act, nor has the Commission received any evidence of facts specified therein as cause for revocation of appellee's certificates.

There is no allegation in appellants' assignments of error that any of the District Court's findings are clearly erroneous. Appellants assign no error as to the lack of or insufficiency of evidence to support such findings.

The facts as found by the District Court present but two ultimate questions of law; i. e., did the Commission's orders of January 23, 1948, and May 9, 1949, revoke appellee's

certificates, and, if so, was such revocation authorized by the applicable statutes. As will be more fully developed in appellee's brief in support of its motion to dismiss or affirm filed herewith, the law on these questions is so well established as to require no further appellate consideration.

Respectfully submitted,

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Republic Bank Building,
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By D. L. Case
Attorneys for Appellee.

In the

District Court of the United States

For the Northern District of Texas,
Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants.

MOTION TO DISMISS OR AFFIRM APPEAL

To the Honorable Supreme Court of the United States:

COMES NOW the appellee herein by its counsel, and moves the Supreme Court of the United States to dismiss with costs the appeal taken herein to said Court by United States of America, Interstate Commerce Commission, and Regular Common Carrier Conference of American Trucking Associations, Inc., upon the following grounds:

1. The appeal is frivolous;

2. There is a want of any substantial question requiring argument and appellate consideration.

IN THE ALTERNATIVE, appellee moves this Court to affirm on the grounds that it is manifest that said appeal

was taken for delay only, and that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

DATED February 24, 1950.

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Attorneys for Appellee.

In the

District Court of the United States

For the Northern District of Texas,
Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL

To the Honorable Supreme Court of the United States:

STATEMENT OF THE CASE

The statement against jurisdiction is here adopted as a sufficient statement of the case for the purposes of this brief in support of appellee's motion to dismiss or affirm. The District Court's uncorrected opinion is reported 87 Fed. Supp. 107.

I.

THE COMMISSION'S ORDER REVOKES, OR PARTIALLY REVOKES APPELLEE'S CERTIFICATES CONTRARY TO THE PERTINENT STATUTES.

On issuance, each of appellee's certificates was denominated a common carrier motor carrier certificate. At the

outset we are impelled to oppose the statutory privileges and duties of a common carrier motor carrier and the restrictions contained in the Commission's order of January 23, 1948.

Federal Statutes Declare All Common Carrier Motor Carriers:	Commission Declared Appellee, A Common Carrier Motor Carrier:
1. Hold themselves out to the general public to engage in the transportation by motor vehicle in interstate commerce of property for compensation;[1]	1. (a) Shall not hold itself out to the general public to engage in the transportation in interstate commerce of property of any class;
	(b) Shall transport property for only specified railroads;
	(c) Shall not issue its own bills of lading;
2. (a) Shall establish, observe and enforce just and reasonable rates;[2]	2. (a) Shall not establish its own rates;
(b) Shall file with the Commission their tariffs showing their local and joint rates;[3] and	(b) Shall transport property only on the rail rates of its parent railroad and the latter's rail subsidiaries; and
3. May establish reasonable through routes and joint rates, charges and classifications with other such carriers.[4]	3. Shall not participate in through routes under joint rates with other common carrier motor carriers.

The District Court has found as a fact that appellee is conducting its operations in compliance with the statutory requirements and permissive practices above tabulated; that the restrictions contained in its sixteen certificates on issuance were not intended by the Commission to preclude, and accordingly did not preclude such conduct. It is patent that the foregoing requirements of the Commission's order of January 23, 1948, would emasculate appellee's common

[1] 49 U. S. C. A. 303(a)(14); U. S. v. Carolina F. C. Corporation, 315 U. S. 475 (86 L. Ed. 971).

[2] 49 U. S. C. A. 316(b).

[3] 49 U. S. C. A. 317(a).

[4] 49 U. S. C. A. 316(c).

carrier rights vested in it by statute and Commission certificates.

The Supreme Court has had recent occasion to review and condemn similar action of the Commission. *United States and Interstate Commerce Commission v. Seatrain Lines, Inc.*, 329 U. S. 424 (91 L. Ed. 396). The Commission had granted Seatrain a certificate as "a common carrier by water of commodities generally" subject to "such terms, conditions, and limitations as are now, or may hereafter be attached to the exercise of such authority by this Commission." Thereafter the Commission on its own motion reopened the proceedings and entered an order cancelling the original certificate and directing the issuance of a new one which would limit Seatrain to the use of certain types of vessels and the carriage of a limited classification of property. Seatrain argued that—

> "* * * The new order actually results in a drastic limitation on the nature of the equipment and service Seatrain is privileged to employ in loading and carrying freight, *and could bar delivery or receipt of freight to or from any consignees except railroads.*"

and the Court agreed that—

> "* * * the proceedings apparently were not reopened to correct a mere clerical error but were more likely an effort *to revoke* or modify substantially Seatrain's original certificate under the new policy announced in the Foss case * * *." (Emphasis supplied.)

As in the instant case the Commission used the artifice of redefinition—

> "* * * to execute the new policy announced * * *"

after issuance of Seatrain's certificates. After determining that the Commission's order would in fact revoke Seatrain's certificate the Court drew an analogy with that part of the Act relating to motor carriers and in part supported its decision that Commission's action was unlawful in this language:

> "But in ruling upon its power to revoke motor carrier certificates, the Commission itself has held that unless it can find a reason to revoke a motor carrier's certificate, which reason is specifically set out in Section 212(a), it cannot revoke such a certificate under its general statutory power to alter orders previously made. * * * But, as the Commission has said as to motor carrier certificates, while the procedural 'orders' antecedent to a water carrier certificate can be modified from time to time, the certificate marks the end of the proceeding. The certificate, when finally granted and time fixed for rehearing it has passed, is not subject to revocation in whole or in part except as specifically authorized by Congress."

Contemporaneously with the decision of the District Court herein a statutory three-judge District Court of the Northern District of Illinois, Eastern Division, reached the same conclusions in a similar motor carrier case. *The Rock Island Motor Transit Company v. United States of America, et al.*, Fed. Supp. (not yet published). Motor Transit held common carrier motor carrier certificates issued under Section 213 of the Motor Carrier Act of 1935, 49 Stat. L. 543 and 49 U. S. C. 5(2)(a)(b). As in the instant case the Commission on its own motion entered an order modifying Motor Transit's certificates by

> (1) prohibiting it from performing service under "all motor" local and "all motor" joint rates with connecting motor carriers; and

(2) imposing specified "key points".

(The Commission's order of January 23, 1948, similarly imposes "key points" on appellee, and this device will be more fully discussed hereafter.)

The District Court held that the Commission's order was a revocation in whole or in part of Motor Transit's certificates; that being entered in a proceeding other than one in conformity with 49 U. S. C. A. 312 the order was void.

As in the certificates of *Seatrain Lines, Inc.* and those of appellee herein the certificate involved in *Boulevard Transit Lines v. United States*, 77 Fed. Supp. 594, contained a purported reservation to the Commission of the right to impose further conditions and limitations. There a competitor of Hudson Bus Transportation Co. filed a petition with the Commission requesting the Commission to impose a seasonal limitation on a certificate previously issued to Hudson. Before the Commission, Boulevard urged that the Commission had the power to impose such restriction by virtue of Section 208(a) of the Interstate Commerce Act and the following language in Hudson's certificate:

> "* * * subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier." (This reservation is not quoted in the Court's opinion but may be found in the Commission's order reported in 46 M. C. C. 9 at p. 18.)

The Commission refused to impose the requested limitation. The District Court concluded as a matter of law that—

> "The Commission is without authority to modify or revoke a certificate once it has issued, unless it comes

within one of the provisions in Section 212(a) of the Act, 49 U. S. C. A., Sec. 312(a)."

As if to insure revocation the Commission has superimposed "key points" on three of appellee's certificates similar to those discussed in *The Rock Island Motor Transit Company v. United States of America, et al.*, supra. The "key point" restriction to be imposed on appellee is worded thus:

> "No shipments shall be transported by applicant between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, La., Texarkana, Tex.-Ark., Fort Worth-Dallas (considered as one), Abilene, Monahans, and El Paso, Tex."

To demonstrate the fact of revocation requires only the recitation of an example. The termini of one of appellee's purchased certificates are Dallas and Abilene, Texas. Absent the "key points" a shipment may be transported by appellee's trucks from Dallas to Abilene. With the "key points" a shipment is not permitted to move from Dallas to Abilene; it must be unloaded at some unnamed point East of Abilene. Appellee's certificated route from Dallas to Abilene is thus shortened; how much so is undefined.

The foregoing authorities are unanimous in their support of the District Court's conclusion that the order of January 23, 1948, would revoke appellee's certificates and that such revocation is contrary to the terms of the applicable statutes.

II.

THE APPEAL SHOULD BE DISMISSED OR AFFIRMED BECAUSE IT IS FRIVOLOUS AND NO SUBSTANTIAL QUESTION IS PRESENTED THAT REQUIRES ARGUMENT AND APPELLATE CONSIDERATION.

For convenience the alternative motions to dismiss or affirm are briefed together.

The ultimate questions of fact in this case are identical with those involved in *United States, et al. v. Seatrain Lines, Inc.*, supra. The District Court made its fact determination in exact accord with those made in the Seatrain case. In both cases it was determined as a fact that at the time of issuance of common carrier certificates the intent of the Commission in the use of a phrase was entirely different from the intent later claimed by the Commission. Both courts found that after issuance of the certificates the Commission changed its policy, and in an attempt to effectuate its new policy with respect to those previously issued certificates, undertook to redefine the phrase in question. Both courts found as a fact that the Commission at the time of issuance of the certificates did not intend to restrict the carriers' operations in the manner undertaken in the orders which were in litigation.

It has been demonstrated herein that the ultimate questions of law presented for appellate consideration are:

1. Does the Commission's order of January 23, 1948, revoke appellee's certificates; and

2. Is such order of revocation authorized by the pertinent statutes?

Those questions of law were determined in harmony with the uniform decisions of the Supreme Court and other district courts wherein the questions have been involved. *United States, et al. v. Seatrain Lines, Inc., The Rock Island Motor Transit Company v. United States, et al., and Boulevard Transit Company v. United States*, supra.

With the facts and the law thus uniformly settled, the Supreme Court has said:

> "Upon the questions of fact the courts in the two circuits, proceeding independently, have reached identical conclusions. The questions of law are few and well settled. After examining the record in the light of the opinions below and the assignments of error here, we are convinced that the rulings were right; so clearly so that the appeal seems to be without reasonable justification, and therefore to have been taken for delay. The motion to affirm is accordingly sustained." Eichel v. United States Fidelity & Guaranty Company, 245 U. S. 102 (62 L. Ed. 177).

See also *Bodkin v. Edward*, 255 U. S. 221 (65 L. Ed. 595). There the Supreme Court, saying the question was one primarily of fact, refused to disturb the findings of the lower courts and sustained the motion to affirm. It is appropriate to interpolate the Supreme Court's holding that Rule 52 applies to appeals by the Government as well as to those of other litigants. *United States v. Yellow Cab Company, et al.*, U. S. (94 L. Ed. 123).

Again, in *Missouri Pacific Railway Company v. Castle*, 224 U. S. 541 (56 L. Ed. 875), the Court said:

> "Defendant in error moves to affirm the judgment under subdivision 5 of rule 6. The motion, we think,

should prevail, since the questions urged upon our attention as a basis for a reversal of the judgment have been so plainly foreclosed by decisions of this court as to make further argument unnecessary."

See also: *Milheim v. Moffat Tunnel Improvement District*, 262 U. S. 710 (67 L. Ed. 1194), and *Hodges v. Snyder*, 261 U. S. 600 (67 L. Ed. 819).

The Supreme Court has also held that where the only grounds presented for appellate review are unsubstantial the appeal is frivolous and should be dismissed. *Wagner Electric Manufacturing Company v. Lyndon*, 262 U. S. 226 (67 L. Ed. 961).

CONCLUSION

WHEREFORE, appellee respectfully submits that the questions presented by Appellants for consideration of the Honorable Supreme Court are so unsubstantial as to render the appeal frivolous. Similarly, the unsubstantial nature of the questions presented is such as to render it apparent that the appeal is taken for the purpose of delay only. The Court below has found the facts and made its conclusions of law in conformity with the uniform decisions of the Supreme Court and of the other Courts wherein the questions have been presented. Accordingly, it is proper, and appellee so prays, that the motion to dismiss be sustained, or in the alternative that the judgment of the Court below be affirmed on appellee's motion to affirm.

Respectfully submitted,

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By D. L. Case
Attorneys for Appellee.

Certificate of Service

I hereby certify that on the 24th day of February, 1950, I mailed copies of the foregoing Statement Against Jurisdiction, Motion to Dismiss or Affirm, and Brief in Support of Motion to Dismiss or Affirm to counsel for the following named defendants and intervenors, appellants herein, at the address of each as indicated:

The United States of America

Philip Perlman, Esq., Solicitor General.	Justice Department, Washington, D. C.
Herbert A. Bergson, Esq., Assistant Attorney General.	Justice Department, Washington, D. C.
James E. Kilday, Esq., Special Assistant to the Attorney General.	Justice Department, Washington, D. C.
William D. McFarlane, Esq., Special Assistant to the Attorney General.	Justice Department, Washington, D. C.
Frederick R. Hanlon, Esq., Special Attorney.	Justice Department, Washington, D. C.
Frank Potter, Esq., United States Attorney, Northern District of Texas.	Federal Building, Dallas, Texas.

Interstate Commerce Commission

Daniel W. Knowlton, Esq., Chief Counsel.	Washington 25, D. C.
Allen Crenshaw, Esq., Assistant Chief Counsel.	Washington 25, D. C.

Regular Common Carrier Conference of the American Trucking Associations, Inc.

Frank Brooks, Esq., Callaway & Reed, Attorneys.	305 Empire Bank Bldg., Dallas 1, Texas.

D. L. Case

D. L. CASE,
Attorney for The Texas and Pacific Motor Transport Company, Appellee.

EXHIBIT A

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Northern District of Texas,
Dallas Division

No. 3696—Civil

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPLICATION TO ENJOIN INTERSTATE COMMERCE COMMISSION'S ORDER

I dissent—(s) Ben C. Dawkins.

J. T. Suggs,
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Robert Thompson,
William R. McDowell,
John C. Robertson,
J. L. Lancaster, Jr.,
W. O. Reed,
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Mulholland, Robie, McEwen & Hickey,
Washington, D. C.,
For Railway Labor Executives Assn., Intervenor,

Callaway & Reed,
Dallas, Texas,
For Regular Common Carrier Conference of the American Trucking Associations, Inc., Intervenor.

Before Circuit Judge HOLMES and District Judges DAWKINS and ATWELL.

ATWELL, *District Judge.*

The petitioner, hereafter known as "Transport," is a corporation with its stock wholly owned by the Texas and Pacific Railway Company.

The Texas and Pacific Railway Company, hereinafter designated, "Railway," is a corporation created by virtue of an Act of Congress.

Transport is authorized to engage in the business of a common carrier by motor vehicle, or, by any means whatsoever, and partly by one means and partly by another, and by arrangement, or, contract with other common carriers. It may lease, contract with, or, otherwise deal in truck, bus, state, or, other transportation systems.

It has carried on this business for many years, subject to the provisions of the Interstate Commerce Commission Act. Such activity has been both interstate and intrastate, in the states of Texas, Louisiana, and New Mexico. Its intrastate business has been under common carriers' certificates issued by the respective states of Texas and Louisiana. It does not operate intrastate in the state of New Mexico. It has engaged in interstate business in Texas, New Mexico and Louisiana under certificates acquired by purchase and original application which were issued by the Interstate Commerce Commission, from time to time.

After the acquisition of authorization to so engage, it invested large sums of money therein. It claims that the cost of certificates authorized by the Commission, amounted to $96,674.18. That in addition to this cost, it has invested heavily in equipment, and transportation facilities for the proper maintenance and prosecution of this business to the extent of $270,257.80. That it is earning gross revenues in interstate transportation in the approximate sum of $20,000 per month, and approximately $150,000 per month from intrastate operation.

That the purpose of its organization, in 1929, was to haul less-than-carload freight shipments, known in its petition as "merchandise traffic," to, from and between stations on the line of Railway. That its schedule of rates on such traffic between such local stations was the same as that maintained by Railway, and in that year it published station-to-station rates on said merchandise, which were served by Railway, corresponding to those of motor carriers, which rates included pick-up and delivery service. It issued bills of lading in its own name, but the transportation, except for local pick-up and delivery service was performed by Railway under arrangements between it and Transport.

In November, 1935, Transport negotiated common carrier-over-road operations between Monahans, Texas and Lovington, New Mexico.

In 1937 it secured authority from the Commission to purchase certificates of convenience and necessity from other common motor carriers, which had been established prior to the Motor Carrier Act of 1935, and commonly known as "grandfather rights."

It purchased the rights from W. A. Johnson, Johnson Motor Lines, and the Fort Worth Warehouse and Storage Company. These all related to motor carriers along the line between Dallas and Abilene and Big Spring, Texas.

In 1938 it purchased from the Southern Transportation Company common carrier and grandfather rights between Dallas and Wills Point, and Gladewater, Texas and Shreveport, Louisiana. That along the routes of these certificates are such important distribution centers, shipping points, designations and gateways as Dallas, Fort Worth, Abilene, Sweetwater and Big Spring, Texas and Shreveport, Louisiana. That all of the interstate traffic handled by Transport either originates in or terminates on, or, moves over such routes. These certificates were validly issued under Sec. 206 and Sec. 213 of the Motor Carrier Act of 1935 which later became Part 2 of the Interstate Commerce Act of 1940.

That such original and purchased certificates had no such conditions attached to them by the Commission as the Commission determined in its orders of January 22, 1948, and May 2, 1949. Such orders, Transport claims, ingraft on the certificates which it owns, certain conditions which destroy, or, materially diminish the common carrier character of such rights and constitutes a taking of private property for a public purpose without just compensation contrary to the 5th Amendment.

It also claims that it had no notice of a hearing, such as is required, for such action, and, that no appropriate testimony was had by the Commission to substantiate its findings. That it will suffer irreparable damage if such

orders are not restrained and that its loss will be approximately $240,000 per year, and, in addition, would deprive Transport of the value of its investments in the certificates aggregating $96,674.18, as well as of its physical property devoted to interstate transportation in the sum of $25,000. That its business in 1948 accorded it a net operating profit, before taxes, of $118,808.06, and a net profit of $69,959.41.

It denies that it has any complete remedy at law which is speedy and adequate. It asks for temporary restraint and for the impanelling of a three-judge court, and, a permanent injunction.

Attached to the petition are informative schedules, "A", "B" and "C". "A" being a report of hearings; "B" showing certificates, and "C" showing a map of Transport's and Railway's system.

The answer of the Commission concedes jurisdiction and admits the purpose of the suit. It admits the acquisition of the certificates, and that Transport has conducted operations in interstate commerce by virtue of the same, but, it contends that the certificates contained restriction in respect "to operations or other matters." It does not answer as to operations by Transport before Motor Carrier Act. It denies that the certificates purchased granted "grandfather rights," and claims that they were limited to operations "auxiliary to, or, supplementary of, rail carrier service." It admits the orders and reports pleaded, and that they are the best evidence of its findings, conclusions and requirements. It denies that any such orders, or, requirements are arbitrary, or, the reversal of former policy with respect to the operation authority granted to Transport. It denies that such orders are unlawful. It denies that Transport will suffer irreparable damage unless its orders of January 22, 1948 and May 9th, 1949, are set aside.

The answer, therefore, makes an issue, upon which testimony was considered appropriate, with reference to investment; carrying on the business before Motor Carrier Act; as to whether the certificates were conditioned "aux-

iliary to, or, supplemental of said carrier services;" damages, notice of hearing and a proper hearing.

Upon these controverted issues the testimony discloses that the allegations as to the controverted issues, made in the petitioner's complaint, are entirely supported by the testimony.

As to a hearing there appear cross currents in 302 U. S. 388, spoken of a little later, and, 331 U. S. 334-336, cited by Railway, as to the inability of this court to have a hearing on this question. 331 U. S. treated only the rate, not the question of a hearing in the constitutional sense.

The defendant, in some of the exhibits, and in its own pleadings, and particularly in its report on the "further hearing by Div. 5," seems to think, and so expressed the thought that Transport's line of service, though justly and reasonably and legally authorized by both state and nation, was too long, and that it made one system. We may appropriately ask, may such a line, 1150 miles long, validly acquired from time to time, be summarily broken into parts, and its independence destroyed? Does the Act justify such destruction?

The wisdom of Congress is displayed in the addition to the Motor Carrier Act which permitted such a service to be organized by and for the service of the Railroad. The main purpose of the supervision by Commission is to save the shipping public from the charge of exorbitant rates, and the nuisance of a monopolizing combination.

The rates charged and filed by Transport were in complete accord with other motor carriers. Highly satisfactory to such shippers and receivers of freight as are represented by the Chambers of Commerce in Dallas and Fort Worth as evidenced by their respective spokesmen.

This is not to say that the granting of a certificate places the holder thereof beyond the power of the Commission to supervise and to continue to inspect its service. But, it is to say that the holder of the certificate must be recognized as the holder of property and that such property may not be taken from it without due process and with an aribitrary or unreasonable motive.

The Supreme court in Railroad Commission v. Pacific Gas Co., 302 U. S. 388, treated this question at considerable length, and stated that the utility had the right to a fair and open hearing, as one of the rudiments of fair play assured to every litigant by the federal Constitution.

If rates, said the court in that case, are confiscatory, then the jurisdiction of the Commission is at once appropriately invoked. Courts do not have a right to question the correctness of the method, or, reasoning adopted by a regulating agency, but the court does have a right to determine whether, or, not the rate will result in confiscation.

The soul of the controversy here is the result that the order has. There is no debate here over the question of inappropriate charges, or, tariff rates, or, combinations, or, monopolies. The question here is *the breaking up of a system that has been validly acquired, for a legal purpose, and which will result in confiscation, and, irreparable damage to the complaining carrier.*

There are countless other decisions impinging upon the theories that are involved in this interesting controversy, such as:—

I. C. C. vs. Parker, 326 U. S. 60;
U. S. vs. Detroit Navigation Co., 326 U. S. 236;
New York v. United States, 331 U. S. 334;
C & O vs. U. S., 283 U. S. 35;
U. S. vs. Pierce Auto Lines, 327 U. S. 515;
I. C. C. vs. Illinois Central, 215 U. S. 452;
U. S. vs. Caroline Freight, 315 U. S. 475;
Crichton vs. U. S., 56 F. (s) 876; 323 U. S. 684;
Crescent Express Lines vs. U. S., 49 F. (s) 92;
Truax vs. Corrigan, 257 U. S. 312;
U. S. vs. Louisiana & P. R. Co., 234 U. S. 1;
In point, U. S. v. Seastrain, 329 U. S. 424, affirming 64 F. (s) 156;
Oakley C. Curtis, 4 F. (2) 979;
Boulevard Transit Lines vs. U. S., 77 F. (s) 594;
Sec. 212 (a) of the Act, 49 U. S. C.,
54 Stat. 899, Act 1940, Consolidated Lines, Railway and motor.

In I. C. C. v. Parker, 326 U. S. 60, the contest was between the Commission and motor carrier Parker, growing out of the Commission having given to Willett certain motor carrier privileges along the line of the Pennsylvania Lines in Ohio, Indiana and Illinois.

Mr. Justice Reed pointed out, for the court, the necessity for the certificates to Parker and explained that this necessity arose out of the desire "to have a common management of Railroad and trucks, for better coöperation than would be obtained by arms-length contracts, or, agreements."

The evidence in that case showed there were operating truck lines which individually could serve all the waystations. He also said that, "We think that it was for a motor service to improve an existing rail service, and that the Commission had authority and administrative discretion to order the certificates to issue."

In a succeeding paragraph the Justice pointed out a necessity for closer coöperation between the rail carriers and the motor carriers. Pages 68-70.

At page 71 his reasoning goes further and at the top of page 72 it is fully harvested.

He also declares on page 73, "*There is no prohibition as to a railway acquiring truck lines in terms*, and such implication is negatived by the discretion to grant certificates conferred on the Commission by the Act."

Mr. Justice Douglas, in his dissenting opinion in which Justice Black and Rutledge joined, make this position of the court so clear that one cannot escape.

Now, the very simple academic thought arises, what, in view of the reasoning of the Supreme court, in the case just spoken of, does "auxiliary and supplemental to," continually used by the Commission in the present case, mean? And, by what authority does the Commission read it into the certificates issued to the plaintiff?

The reasoning of the court in the Parker case shows that the very action of the Commission, under the Act, was for the purpose of being "supplemental and auxiliary," of the railroad carrier.

The facts here show that the railroad carrier owns all the stock in Transport, and, with that ownership, we must concede, engineered the ultimate securing of the complete 1150 miles covered by Transport, which, nearly all of the way, was "auxiliary to and supplemental of" the Railroad transportation. Transport's line went into New Mexico, as a feeder for the same system.

The dictionary defines "auxiliary," to mean, "helping or aiding; giving support; subsidiary or additional supplementary power. A helper or aid; a confederate; an ally as in war."

Almost as simple, is the definition of the word, "supplemental," which is, "additional; or, have the nature of or forming a supplement;" as, "he had come upon supplementary sources of income."

We, therefore, find that Transport was "auxiliary to and supplemental" of Railway. That is why Railway assisted in its creation. That is why Railway put up the money to buy the stock and to get it in working order.

That leaves two questions:—

(a) Is such action monopolizing?

If so, determination of that question was provided for by Congress. It authorized, in the general wording of the Motor Act, the consolidation, or, purchase of, motor carriers to assist the railway carrier. It required the Commission to determine the question before authorizing such consolidation or purchase, and in this case the Commission did determine the question in the negative and authorized the purchases here involved.

(b) The last question is whether, after having permitted the acquisition of these certificates, the Commission may issue orders which stifle, and, in reality, destroy the value of such certificates. No one learned in the law could permit an affirmative answer to that question. It is a taking of private property without due process. It is confiscation. It is destruction.

Glancing once more at the provisions of the statute, we find that Sec. 203(a)(14), defines common carrier by

motor vehicle. The attempt by the Commission to restrict the term, "common carrier," would be an usurpation of power. So, also, there may be no lawful restriction of rates. Neither does Sec. 208(a) while broad, permit a modification of a separate provision of the Act itself. It has been said that Sec. 206(a) means that the Commission shall preserve substantial parity between future and past operations. A valid grant cannot be affected by the addition of an invalid condition.

In truth, conditions and limitations granted under Sec. 208(a) must be reasonable, and they must be required by public convenience and necessity, or, for the purpose of carrying out the requirements established under Sec. 204 (a)(1) and (6). Conditions must conform to the requirements of Sec. 208, itself, and must be consistent with and fall within the specific statutes applicable to common motor carriers. Thus, while the Commission might prescribe the points to be served, it could not forbid the participation in joint rates and through routes for the simple reason that such a provision would be inconsistent with the wording of Sec. 216 of the Act.

Nor can revocation be accomplished in any way except under Sec. 212. It cannot be brought about by the imposition of terms and conditions, or, limitations. The Commission, itself, said in Quaker City Bus Co. v. Black Hawk Lines, Inc., that, "The existence of a certificate creates a vested motor carrier status which stays in force and effect * * * until the certificate is revoked in accordance with the procedure prescribed in Sec. 212(a)."

If we give the Commission power to revoke by terms, limitations and conditions, by an attempted stretch of Sec. 208(a), then we make Sec. 212(a) utterly useless. Each Section has its purpose. Each Section expresses the intent of the Congress. Such intent must govern.

The permanent injunction will issue as prayed, and a judgment in accordance will be drawn and forwarded for signatures.

DONE at Dallas, Texas, this the 11th day of November, 1949.

EXHIBIT B

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Northern District of Texas,

Dallas Division

Civil Action No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled suit came on to be heard on November 11, 1949 before a specially constituted court of three judges consisting of the Honorable Edwin R. Holmes, Circuit Judge; the Honorable Ben C. Dawkins, District Judge; and the Honorable Wm. H. Atwell, District Judge and supplementing the findings made in the opinion of the majority of the Court by the Honorable Wm. H. Atwell, District Judge, the following ultimate facts are found:

1. The petitioner, hereafter called "Transport," is a corporation wholly owned by The Texas and Pacific Railway Company and under appropriate charter powers and certificates of authority, is operating as a common carrier by motor vehicle in both intra- and interstate commerce over a series of connected routes generally paralleling its parent railroad and extending from New Orleans, Louisiana to El Paso, Texas.

2. Transport carriers on its interstate business under sixteen common carrier certificates issued to it by the Interstate Commerce Commission; thirteen of which were issued under Section 207 of the Interstate Commerce Act on Transport's original application, and three of which were issued under Sections 206 and 213 (now Section 5) of said Act, evidencing operating rights purchased by Transport with Commission approval from other common carrier motor carriers who were so operating on and prior to June 1, 1935.

3. With exceptions not important here, each of the certificates in question at the time of issuance carried a condition prohibiting Transport from serving or interchanging traffic at any point not a station on the line of its affiliated railways, and eleven of the Section 207 certificates contained a condition limiting the authorized service to that which was "auxiliary to or supplemental of train service" of the affiliated railways. All of the certificates contained a provision reciting that the certificate should be subject to such further conditions as the Commission might thereafter find necessary in order to restrict the operation to service "auxiliary to or supplemental of train service."

4. At the time of their original use in the several certificates, the words "auxiliary to or supplemental of train service" did not imply more than a restriction limiting the motor carrier service to points on the lines of the parent railroad and its rail subsidiaries; and when the several certificates were issued, the Commission did not intend that the quoted words should preclude Transport from issuing its own bills of lading and serving the public generally on motor rates, including joint motor rates on through routes established with other motor carriers.

5. On January 21, 1943, the Commission issued a report with respect to eleven of Transport's Section 207 certificates, prohibiting Transport from participating in certain motor carrier tariffs and declaring that the condition limiting operations to service "auxiliary to or supplemental of" train service confined it to carriage of shipments on rail

bills of lading at rail rates, and preclude its participating in joint motor rates with other connecting motor carriers. On January 22, 1948, pursuant to a hearing held on its own motion on October 17, 1944, the Commission issued a report and order repeating its 1943 interpretation of the words "auxiliary to or supplemental of train service" and imposing that condition on Transport's five certificates which did not contain it originally, including the three certificates issued under Sections 206 and 213 of the 1935 Act. This interpretation of the quoted phrase was not the Commission's original intent when the several certificates were issued, but rather reflected a change in the Commission's policy in such matters which had developed after the certificates were issued.

6. Defining "key points" as points between which, or through, to or from more than one of which, shipments might not be transported, the Commission in its 1948 report and order designated New Orleans, Alexandria and Shreveport, Louisiana, and Fort Worth-Dallas (considered as one), and Abilene, Texas, and Texarkana, Tex.-Ark., as "key points" with respect to fourteen of the certificates to which no such restriction had originally attached, thus breaking Transport's permissible operations into a number of short hauls. Three of such certificates specifically authorized operations between New Orleans and Shreveport, La., between Dallas and Abilene, and between Big Spring and Pecos, Texas, respectively.

7. Prior to the Commission's 1943 report Transport issued its own bills of lading and participated in motor carrier tariffs under its Section 207 certificates as well as its "purchase" certificates, and still does so under the five certificates (including the three "purchase" certificates) which were not included in the 1943 report, all with full knowledge of the Commission.

8. Transport has invested $96,674.18 in acquiring its certificates, including an aggregate purchase price of approximately $87,000.00 for the three certificates issued under Sections 206 and 213 of the 1935 Act. The interstate certificates have an aggregate present market value

of approximately $65,000.00. If the Commission's 1948 orders were carried into effect, the value of the certificates would be destroyed. In addition Transport would lose some $240,000.00 per annum in revenue and its presently profitable operation would henceforth produce a loss.

9. The Commission gave Transport notice of its October 17, 1944 hearing by orders reciting only that its purpose was

> "to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates * * *"

Representatives of competing motor carriers, the shipping public and railway labor participated in the hearing and inquired of the hearing officer its specific purpose. The examiner refused to elaborate on the notice and stated that in the absence of any protest, probably no change would be made in Transport's certificates. Thereupon the other participants joined Transport in requesting that the hearing be cancelled and the proceedings discontinued. The request was refused.

10. In approving Transport's purchase of each of the certificates issued under Sections 206 and 213 of the 1935 Act (Sections 206 and 5(2)(b) of the 1940 Act), the Commission found that the transaction would be consistent with the public interest, would enable the affiliated railroad to use motor service to public advantage in its operations, and would not result in undue restraint of competition; and the Commission has received no contrary evidence on these points subsequently.

11. The Commission has received no evidence of facts specified as cause for revocation of the certificates under Section 212(a) of the Act, and has neither instituted nor entertained any proceedings under that section.

CONCLUSIONS OF LAW

We conclude as matters of law:

1. The Commission's orders herein involved have the effect of revoking, or partially revoking Petitioner's interstate common carrier certificates, in violation of the terms

of the Interstate Commerce Act, and particularly Section 212(a) thereof.

2. Said orders are confiscatory of Petitioner's property in violation of the Fifth Amendment of the Constitution of the United States.

3. In substantially diminishing Petitioner's operating rights which it had purchased from other motor carriers in bona fide operation on and prior to June 1, 1935, covered by certificates in the Commission's proceedings numbered sub-nos. 5, 6 and 8, the Commission's said orders are violative of the terms of the Interstate Commerce Act and particularly Section 206(a) thereof.

4. In restricting Petitioner to carriage of shipments on rail bills of lading, for specified railroads, and precluding it from dealing directly with the public generally, said orders are violative of the terms of the Interstate Commerce Act and particularly Sections 203 and 207 thereof.

5. In restricting Petitioner to carriage of shipments at rail rates, and precluding it from utilizing motor rates, said orders are violative of the Interstate Commerce Act and particularly Sections 216 and 217 thereof.

6. In precluding Petitioner from interchanging freight with other common carrier motor carriers on through routes under joint motor rates, said orders are violative of the Interstate Commerce Act and particularly Section 216 thereof.

7. In imposing conditions on Petitioner's certificates which would have the effect indicated in the several foregoing conclusions, said orders are violative of the Interstate Commerce Act and particularly Section 208(a) thereof.

8. Said orders of the Commission, in imposing additional conditions on Petitioner's certificates, and in changing the interpretation of conditions originally imposed on some of said certificates, are wholly unsupported by evidence.

9. Petitioner was not accorded due process of law in the proceedings culminating in the Commission's entry of said orders.

Done at Dallas, Texas this 6th day of December, 1949.

(s) Edwin R. Holmes,
United States Circuit Judge.

(s) Wm. H. Atwell,
United States District Judge.

.....
United States District Judge.

From the foregoing conclusions of law I dissent.

(s) Ben C. Dawkins,
United States District Judge.

EXHIBIT C

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Northern District of Texas,
Dallas Division

Civil No. 3696

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants.

JUDGMENT

On the 11th day of November, 1949, the above entitled and numbered cause came on for trial on petitioner's prayer for a permanent injunction against the defendants, United States of America and Interstate Commerce Commission, to enjoin, set aside, annul and suspend those certain orders of the Interstate Commerce Commission dated January 22, 1948 and May 9, 1949, issued in its proceedings entitled "The Texas and Pacific Motor Transport Company, Common Carrier Application" and bearing its docket No. MC-50544 (including Sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22). The cause came on before this statutory three-judge District Court composed of the Honorable Edwin R. Holmes, Circuit Judge, the Honorable Benjamin C. Dawkins, District Judge, and the Honorable Wm. H. Atwell, District Judge, duly constituted and assembled in accordance with the requirements of statute. The defendants having been served with process as pro-

vided by law and having entered their appearance herein, and the parties having stipulated in writing that the trial on such date would be on petitioner's prayer for permanent relief and that the order entered thereon would be the final judgment of the Court, came the petitioner and the defendants and intervenors, and each of them by and through their attorneys, respectively. Each of the members of the three-judge Court being present and having read the pleadings of the parties and having heard the evidence and the argument of counsel, a written opinion making findings of fact and conclusions of law was prepared by the Honorable Wm. H. Atwell, in which he was joined by the Honorable Edwin R. Holmes, the Honorable Benjamin C. Dawkins, dissenting, and such opinion was entered as the opinion of the majority of the Court. Additional findings of fact and conclusions of law supplementing those made in the Court's opinion having been made and entered, upon such findings of fact and conclusions of law it is hereby ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The written opinion of the majority of the Court and the supplemental findings of fact and conclusions of law shall be and they are hereby together made the findings of fact and the conclusions of law required by the rules of procedure.

2. That the orders of January 22, 1948, of the Interstate Commerce Commission, by Division 5, and of May 9, 1949, by the entire Commission, in the Commission docketed and entitled "No. MC-50544 (including Sub. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22) The Texas and Pacific Motor Transport Company Common Carrier Application," be, and they are hereby permanently enjoined, set aside, annulled and suspended insofar as said orders impose on petitioner's existing certificates of public convenience and necessity any conditions which were not attached to said certificates on issuance, and insofar as said orders preclude petitioner from:

a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;

b. Interchanging traffic with other common carrier motor carriers on joint motor rates;

c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;

d. Transporting shipments, under its interstate certificates of public convenience and necessity issued in Interstate Commerce Commission Docket MC-50544 and sub Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 19 and 22, between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Texarkana, Tex.-Ark., Fort Worth, Dallas, Abilene and Monahans, Texas;

and insofar as said orders confine petitioner to utilization of railroad rates.

3. That the defendants United States of America and Interstate Commerce Commission be and they are hereby permanently enjoined from imposing any of the conditions prescribed in its order of January 22, 1948 on any of petitioner's existing certificates of public convenience and necessity not so restricted on issuance and from interpreting or enforcing said orders of January 22, 1948 and May 9, 1949 and the conditions imposed on petitioner's certificates in such manner as will prohibit petitioner from:

a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;

b. Interchanging traffic with other common carrier motor carriers on joint motor rates;

c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;

d. Transporting traffic to, through, from or between any so-called "key points" on that part of its route covered by interstate certificates of public convenience and necessity, to which no "key point" restriction attached on issuance of such certificates,

or in such manner as will restrict petitioner to ship on rail rates or on railroad bills of lading.

4. That petitioner do have and recover of and from defendants costs of this action and have execution therefor.

Dated at Dallas this 14th day of December, 1949.

Edwin R. Holmes,
Circuit Judge.

Wm. H. Atwell,
District Judge.

I dissent—

Ben C. Dawkins,
District Judge.

Approved as to form:

William D. McFarlane,
Special Assistant to the
Attorney General.

Allen Crenshaw,
Assistant Chief Counsel
Interstate Commerce Commission.

J. T. Suggs,
Attorney for Petitioner.

STATUTES CITED

Interstate Commerce Act:

"Sec. 5. (As amended August 24, 1912, February 28, 1920, June 10, 1921, June 16, 1933, August 9, 1935, and September 18, 1940.) (U. S. Code, title 49, sec. 5.) * * *

"(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under sub-paragraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants [and, in case carriers by motor vehicle are involved, the persons specified in section 205(e)], and shall afford reasonable opportunity for interested parties to be heard. If

the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

"Sec. 203. (Added August 9, 1935, as amended June 23, 1938, June 29, 1938, and September 18, 1940.) (U. S. Code, title 49, sec. 303.) (a) As used in this part— * * *

(14) The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I."

"Sec. 208. (Added August 9, 1935.) (U. S. Code, title 49, sec. 308.)

(a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public conveniences and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): *Provided, however*, that no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require."

"Sec. 212. (Added August 9, 1935, as amended June 29, 1938, and September 18, 1940.) (U. S. Code, title 49, sec. 312.) (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however*, That no such certificate, permit, or license shall be revoked (except

upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204(c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further*, That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of section 206, 209, or 211, or by virtue of the second proviso of section 206(a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 211(c), 217(a), or 218(a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder."

"Sec. 216. (Added August 9, 1935, as amended June 29, 1938, and September 18, 1940.) (U. S. Code, title 49, sec. 316) * * *

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges,

and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers."

"Sec. 217. (Added August 9, 1935, as amended September 18, 1940.) (U. S. Code, title 49, sec. 317.) (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful."

In the Supreme Court of the United States

OCTOBER TERM, 1949 1950

No. 37

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

OPPOSITION OF THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION TO MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 7, paragraph (3), appellants, the United States and Interstate Commerce Commission, file this opposition to appellee's motion to dismiss or affirm, which motion was served upon appellants on February 27, 1950.

I

Appellee contends that the orders of the Commission, which are here involved, have the effect of revoking in whole or in part the certificates which were issued to it upon its numerous applications. This contention is based upon the claim that as each certificate was denominated a "com-

mon carrier motor carrier certificate," it entitled appellee to perform general common carrier service.

The contention that issuance of a common carrier certificate, without more, necessarily authorizes unrestricted operation as a motor carrier is patently without merit. The Interstate Commerce Act specifically provides that certificates shall be issued upon the conditions determined by the Commission, both under Section 5 (2) (b), which confines approval of purchases "to such terms and conditions and such modifications as [the Commission] shall find to be just and reasonable," and in the case of certificates issued under Section 207, which are subject to "such reasonable terms, conditions and limitations" as may be imposed under Section 208 (a). The limitation included in all of the certificates issued to appellee, that the service performed be auxiliary to or supplemental of rail service, was specifically held by this Court to be within the statutory authority of the Commission. *Interstate Commerce Commission* v. *Parker Motor Freight*, 326 U. S. 60.

Appellee's interpretation of these statutory provisions is not only unwarranted by a plain reading of the Act, but is strangely inconsistent with the scope of the operations proposed by appellee at the time when it submitted applications to the Interstate Commerce Commission for these certificates. The tenor of appellee's applications was that it sought to perform service

auxiliary to and supplemental of the rail service of its parent company, Texas & Pacific Railway Company. The testimony at the hearings on those applications was directed to demonstrating the benefits which would accrue to the public, through expedited service on "package freight" and which would result in economies in use of equipment of the railroads. The reports of the Commission treat of those benefits and advantages. (Cf.: *T. & P. Motor Transport Company—Purchase—Johnson,* 5 M. C. C. 89, 92, and concurred expression of Commissioner Caskie, at 93; *T. & P. Motor Transport Co.—Purchase—Southern,* 5 M. C. C. 653, at 657).

II

United States v. *Seatrain Lines,* 329 U. S. 424, relied upon by appellee, has no bearing on this situation. Appellee here was granted authority only to conduct auxiliary and supplemental service, and it has exceeded its grant by engaging in a general competitive motor transport business. The certificate issued to Seatrain Lines, which was a water carrier, contained no comparable limitation. But, even aside from such obvious factual differences, this Court, in the *Seatrain* case, specifically distinguished the authority of the Commission to impose conditions upon certificates of motor carriers. The Court points out (p. 431) that, while Section 309 of the Act does not authorize the Commission to specify the service to be rendered by water car-

riers. Section 208 does authorize the Commission so to limit the type of service to be conducted by motor carriers. The language of Section 309 (d), relating to water carrier certificates, "would seem to preclude the Commission from attaching terms and conditions to a certificate which would deprive the public of the best type of service which could be rendered * * * by a water carrier. In view of this difference between the statutory authority of the Commission to prescribe the service of water carriers and of motor carriers, our decisions relating to the Commission's power as to motor carriers in this respect are not controlling as to the Commission's power to regulate the details of the service of water carriers" (*ibid.*).

We submit that the actions of the Commission in issuing the reports and orders of January 22, 1948, and May 9, 1949, were plainly authorized by statute and by the previous decision of this Court. The orders should not have been set aside.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

MARCH 8, 1950.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1950

No. [redacted] 39

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.,
Appellant,

vs.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

FRANK C. BROOKS,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 714

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.,
Appellant,

vs.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

Filed Feb. 11, 1950

Now comes Regular Common Carrier Conference of American Trucking Associations, Inc., Intervenor-appellant, and pursuant to Supreme Court Rule 12, files this, its statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to

review upon appeal the final decree heretofore rendered in said cause.

A

The appeal herein is from a final decree made and entered by a District Court of the United States specially constituted under Title 28, United States Code, Sections 2284 and 2325, and said appeal is made pursuant to and in accordance with Title 28, United States Code, Sections 1252 and 2101(b), which latter sections provide for a direct appeal within sixty (60) days, to the Supreme Court of the United States from a final decree granting or denying, after notice and hearing, a permanent injunction in any civil action, suit or proceeding required by any act of Congress to be heard and determined by a District Court of three judges. The jurisdiction of the Supreme Court to review the judgment on direct appeal is believed sustained by the following decisions:

United States, et al. v. *Hancock Truck Lines, Inc.*, 324 U. S. 774, 65 S. Ct. 1003;

United States v. *Capital Transit Company*, 325 U. S. 357, 65 S. Ct. 1176;

United States v. *Detroit and Cleveland Navigation Co.*, 326 U. S. 236, 66 S. Ct. 75.

B

The final decree appealed from was made and entered on the 14th day of December, 1949.

C

The application for appeal is herewith filed this 11th day of February, 1950.

D

The statutes of the United States involved in the above entitled cause are: Sections 5(2)(a), (b), 5(9), 206, 207,

208(a), 212 and 221(b) (49 U. S. C. Sections 5(2)(a), (b), 5(9), 306, 307, 308(a), 312, 321(b) of the Interstate Commerce Act, which are set forth in Appendix A attached hereto and made a part hereof.

E

The final decree appealed from permanently enjoined, set aside and annulled the orders of the Interstate Commerce Commission, Division 5, of January 22, 1948, and the orders of the entire Commission of May 9, 1949, docketed and entitled "No. MC-50544 (including sub-numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22) The Texas and Pacific Motor Transport Company Common Carrier Application," insofar as said orders imposed on petitioner's existing certificates of convenience and necessity any conditions which were not attached to said certificates on issuance, and insofar as said orders preclude petitioner from:

a. filing, publishing and maintaining common carrier motor rates as provided by statute in the case of Common Carrier Motor Carriers generally;

b. interchanging traffic with other common carrier motor carriers on joint motor rates;

c. issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;

d. transporting shipments, under its interstate certificates of public convenience and necessity issued in said docket, between any of the following points, or through, or to, or from more than one of said points: New Orleans, Alexandria and Shreveport, La.; Texarkana, Texas-Arkansas, Ft. Worth, Dallas, Abilene and Monahans, Texas, and insofar as said orders confine petitioner to utilization of railroad rates.

Said final decree permanently enjoins the United States of America and Interstate Commerce Commission from im-

posing any of the conditions prescribed in said orders of January 22nd, 1948 and May 9, 1949, on any of petitioner's existing certificates of public convenience and necessity not so restricted on issuance and from enforcing said orders in such manner as will prohibit petitioners from those acts enumerated in (a), (b) and (c) above, or will prohibit petitioner from transporting traffic to, through, from or between any so-called "key points" on that part of its route covered by interstate certificates of public convenience and necessity to which no "key point" restriction attached on issuance of such certificates.

F

The issues involved in this appeal are substantial in that they are of major importance to the motor carrier and railroad industries and are fundamental to the administration of the Interstate Commerce Act.

The order of the Court herein in effect grants permission to a railroad to acquire possession and to operate a motor carrier business which normally would be competitive with the railroad, and it is contended by this Intervenor that such is contrary to the intent of the Congress expressed in its Statement of National Transportation Policy and in the Interstate Commerce Act.

Respectfully submitted,

FRANK C. BROOKS,
Attorney for Regular Common Carrier Conference of American Trucking Associations, Inc.,
Intervenor.

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APPENDIX "A"

CIVIL ACTION No. 3696

Sec. 5 (2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers

by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: Provided, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

5(9) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate.

Sec. 206. (a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: Provided, however, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate

without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in Section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: And provided further, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdicoitn of the Commission under this part.

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission

shall prescribe, continue such operation until otherwise ordered by the Commission.

Sec. 207. (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: Provided, However, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

Sec. 208 (a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): Provided, however, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the

development of the business and the demands of the public shall require.

Sec. 212 (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: Provided, however that no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204 (c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: And provided further, That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of section 206, 209, or 211, or by virtue of the second proviso of section 206 (a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 211(c), 217(a), or 218(a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(b) Except as provided in section 5, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

Sec. 221 (b) Except as otherwise provided in this part, all orders of the Commission shall take effect within such reasonable time, not less than thirty days, as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 38

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

No. 39

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., APPELLANT

v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINIONS BELOW

The original opinion of the specially constituted district court (R. 164) is reported in 87 F. Supp.

107. The amended opinion (R. 172) is unreported. The decision of the Interstate Commerce Commission (R. 23) is reported in 47 M. C. C. 753.

JURISDICTION

The judgment of the district court was entered on December 14, 1949 (R. 180). The petition for appeal in No. 38 was presented and allowed on February 10, 1950 (R. 183, 184). The petition for appeal in No. 39 was presented on February 11, 1950 (R. 195) and allowed on February 13, 1950 (R. 196). The jurisdiction of this Court is invoked under 28 U. S. C. 1253 and 2101 (b). Probable jurisdiction was noted on May 1, 1950.

QUESTION PRESENTED

The Interstate Commerce Commission issued sixteen certificates of purchase and of convenience and necessity, under Sections 5 (2) and 207 of the Interstate Commerce Act, to a motor carrier wholly owned by a railroad. Each of the certificates contains one or more conditions upon the type of service to be conducted, and all contain the provision that the Commission may impose, in the future, such further specific conditions as it finds necessary to restrict the motor carrier's operations to service which is auxiliary to or supplemental of the rail service.

The question presented is whether the Commission has the right to alter the wording of the certificates so as to specify additional conditions con-

fining the motor carrier to such auxiliary and supplemental service and forbidding independent and competitive motor carrier operations.

STATUTES INVOLVED

Sections 5 (2) (a), (b), 5 (9), 206, 207, 208 (a), 212 and 221 (b) (49 U. S. C. secs. 5(2) (a), (b), 5 (9), 306, 307, 308 (a), 312 and 321 (b)) of the Interstate Commerce Act, as amended, are set forth in the Appendix.

STATEMENT

These are direct appeals from the judgment (R. 180) of a specially constituted district court permanently enjoining and setting aside two orders of the Interstate Commerce Commission entered in No. MC-50544 (including sub-nos. 1 to 12, inclusive, 14, 19 and 22). *The Texas and Pacific Motor Transport Company Common Carrier Application*, 47 M. C. C. 753 (R. 23). The first, on January 22, 1948 (R. 41) was by Division 5 of the Commission. The second, on May 9, 1949 (R. 43), was by the entire Commission and denied the applicant's petition for reconsideration and vacation of the report and order of January 22, 1948.

Appellee motor carrier, hereinafter called Transport, is a wholly owned subsidiary of the Texas and Pacific Railway Company, hereinafter called the Railway (R. 24). Prior to enactment of the Motor Carrier Act of 1935 (Part II, Interstate Commerce Act), Transport engaged only in a limited pick-up and delivery service for the Railway (R.

3). Based upon certificates of operating authority obtained from the Commission, the first of which was applied for January 16, 1936 (see R. 15), Transport gradually established an extensive system of regular routes, paralleling generally the Railway's lines or those of certain other rail carriers, and extending about 1,150 miles from New Orleans to El Paso, Texas, and Lovington, New Mexico (R. 24). This system of regular route operations was established in segments, both by the purchase of other carriers and by the inception of new operations by Transport. As the operating segments were from time to time determined upon, Transport applied to the Commission for approval and certification of the proposed purchases under section 5 (2) (formerly 213) of the Interstate Commerce Act, and in cases of originated operations, for certificates under section 207 (R. 4). During the period from July, 1939, to November, 1942, the Commission issued to Transport sixteen certificates of convenience and necessity, each of which covers a portion of Transport's operating route as it was acquired, and which together make up the integrated operation presently conducted by Transport (R. 24, 37-39). Each of the certificates issued in the sixteen proceedings contains conditions restricting the type of service to be performed by Transport. As taken from all the certificates, the conditions are as follows (R. 40):

> 1. The service to be performed by applicant shall be limited to service which is auxiliary to,

or supplemental of rail service of the Texas and Pacific Railway, or in certain cases of its subsidiary rail lines, (or of Texas-New Mexico Railway Company) herein called the railway.

2. Applicant shall not serve, or interchange traffic at any point not a station on a rail line of the railway.

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

3A. Shipments transported by applicant shall be limited to those which it receives from or delivers to the railway under a through bill of lading covering in addition to movement by applicant, a prior or subsequent movement by rail, and those which it transports as parts of through shipments prior or subsequent to movement by rail under appropriate transit rules.

3B. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points or through, or to, or from more than one of said points: Forth Worth, Tex., and Texarkana, Tex.-Ark.

3C. No shipments shall be transported by applicant between any of the following points or through, or to, or from more than one of said points: El Paso and Pecos, Tex.

4. All contractual arrangements between applicant and the railway shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and suitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

5A. The authority herein granted shall be subject to such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, train service of the railway, and in order to insure that the service rendered shall not unduly restrain competition.

All of the certificates issued to Transport contain a condition, either in the terms of condition 5 or of condition 5A, making the certificates subject to such "further specific conditions" or "further limitations or restrictions" as the Commission might in the future find it necessary to impose in order to restrict Transport's operation to service auxiliary to, or supplemental of, rail service. And all of the certificates contain one or more, mostly more, of the other conditions. Appendix A to the Commission's report of January 22, 1948, in No. MC-50544 lists, and cites the prior reports in, each

of the sixteen proceedings (R. 37-38), and Appendix B contains a brief description of the "Scope of Operation" involved in each proceeding and also shows in the last column the conditions imposed upon each certificate (R. 38-39).

Following its report in *Substituted Freight Service,* 232 I.C.C. 683, the Commission issued, among other such permissions, Special Permission R-M No. 2418, of February 6, 1940, the purpose of which was to authorize departures from its tariff rules to enable publication of schedules providing for the substitution of rail for motor service. As authority for the substituted service thereby covered, the special permission required the publication of schedules providing that, unless the shipper directs that the rail service shall not be performed, the motor carriers parties thereto may, at their option, substitute rail service between the points and via the rail carriers shown therein "for their actually available services via highways for which such motor carriers have lawful operating rights as common carriers via motor vehicle." Subsequently the special permission was modified so as not to extend beyond August 19, 1941, to common carriers by motor whose certificates limit their operations to service between stations on the lines of rail carriers, which is auxiliary or supplementary to the service of the rail carriers and to transportation to be performed by the motor carrier in connection with a prior or subsequent movement by the rail

carrier. In connection, however, with a petition filed by Transport asking for the defining of its rights under certain certificates and other determinations, the special permission was, for such purposes, further extended and continued until final determination of the petition. (R. 259-260.)

The prayer of the petition was that Transport be allowed to maintain the directory it published and accorded equal rights with other common carriers of filing and maintaining tariffs, or, in the alternative, that the Commission provide some reasonable method by which it and the Railway may continue to join in the rates to which they are presently parties (R. 260). In response to the petition in the matter of certificates involved, the Commission reopened 9 of Transport's application proceedings under section 207a, and, after hearing, issued its report of January 21, 1943, in No. MC-50544 (including sub-nos. 1, 2, 3, 4, 7, 9, 10 and 14), *The Texas and Pacific Motor Transport Company Common Carrier Application,* 41 M.C.C. 721 (R. 259). In general, the certificates issued in the proceedings contain conditions numbered 1, 2, 4 and 5, and some of them contain in addition condition numbered 3 or 3A (see Conditions, p. 4, *supra*) (R. 261-262). The report, after noting that Transport is a party to tariffs containing all-motor local rates and all-motor joint rates, and that it and the Railway are parties to a substituted freight service directory providing for substitution of rail service for motor

service and also to another such directory providing for substitution of motor service for rail service, states, p. 724 (R. 263):

> Thus it appears that the petitioner is engaging in operation as a common carrier by motor vehicle performing the same kind and character of service as is performed by motor common carriers generally. It holds itself out to, and transports shipments moving wholly by motor vehicle between points on its lines and between points on its lines and points on the lines of other motor carriers under bills of lading issued by the petitioner and it participates in and collects all-motor rates. This service is the same as the service rendered by a motor carrier which is not performing a service auxiliary to or supplemental of, rail service. The petitioner also performs a substituted service for the railway. The tariffs also provide that the rail service of the railway may be substituted for petitioner's service by motor vehicle.

Later on, the reports states, pages 725-726 (R. 264-265):

> The certificates granted petitioner were predicated upon a showing that public convenience and necessity require operation by it for the purpose of bringing about an improvement in the rail service of the railway in the movement of less-than-carload merchandise traffic to and from small way-stations which were without through-train service. This improvement was to be accomplished

through the use of trucks, instead of cars moving in way-freight trains, as a substitution of a more efficient for a less efficient means of service. The traffic is so-called package or merchandise freight in less-than-carload quantities which the railway then was and had been under an obligation to transport and which it would continue to transport whether we granted or denied the applications. *Kansas City S. Transport Co., Inc., Com. Car. Application,* 28 M.C.C. 5. There was no need for another motor carrier to furnish service such as that supplied by existing motor carriers which have no close relation to the operations of the railway. Accordingly, petitioner was granted certificates subject to conditions which were imposed for the purpose of so limiting its service as to prevent it from engaging in motor-vehicle operations unconnected with any rail service. The need for improvement in the rail service of the railway not only forms the basis for the conditions imposed but is the basis upon which operating authority was granted to the petitioner, rather than requiring the railway, if the improvement in its service were to be accomplished, to utilize the service of existing motor carriers. Without this need for improvement in the rail service there would have been no public need warranting the granting of the certificate. There was no public need for another motor carrier in the field nor for the railway, through petitioner, to engage in a new field of service.

Condition 1 limits the character of service to be performed by the petitioner to that

which is auxiliary to or supplemental of the rail service of the railway. It limits the service to be performed by truck to the transportation of the rail traffic of the railway. It permits the public to receive an improved rail service through the use of trucks instead of trains as a means of fulfilling the railway's undertaking to transport. Petitioner's status as a common carrier by motor vehicle is not dependent upon its having direct dealings with the shipping public. *Willett Co. of Indiana, Inc., Extension—Ill., Ind., and Ky.*, 21 M.C.C. 405. Its service is necessarily limited to points served by the railway, hence condition 2. Condition 1 permits all-motor movements in the handling of rail traffic at railroad rates and on railroad bills of lading. To and from certain points on segments of the rail lines the improved service was to be accomplished by performing the movements partly by train and partly by motor vehicle, an auxiliary or supplemental service coordinated with the train service, hence condition 3. Since petitioner's certificates limit the service to be performed to that which is auxiliary to or supplemental of the rail service of the railway, it is without authority to engage in operations unconnected with the rail service and, accordingly, may not properly be a party to tariffs containing all-motor or joint rates, nor participate in a directory providing for the substitution of train service for motor vehicle service at its option. To the extent petitioner is performing or participating in all-motor movements on the bills of lading of a motor carrier and at

> all-motor rates, it is performing a motor service in competition with the rail service and the service of existing motor carriers; and, to the extent it is substituting rail service for motor vehicle service, the rail service is auxiliary to or supplemental of the motor vehicle service rather than the motor vehicle service being auxiliary to or supplemental of rail service.

"No affirmative order", the report concludes, "will be entered at this time but petitioner will be expected, within a reasonable time after the service of this report, to bring its service and tariffs in line with the foregoing finding."

On May 20, 1943, Transport and the Railway filed a joint petition for reconsideration and for modification of the Commission's tariff regulations, or, in the alternative, for further hearing, such hearing to include, in addition to the nine proceedings considered in 41 M.C.C. 721, two other proceedings in which Transport had been issued certificates and also certain temporary authorities (R. 268). Upon consideration of the records and of the petition, the Commission reopened for further hearing the title proceeding in No. MC-50544 and all fifteen of the subnumbered proceedings "for the sole purpose of determining what, if any, changes or modifications should be made in the conditions attached to the 16 certificates and the three temporary authorities, and denied the petition in all other respects" (R. 25, 306, 308-309). Subse-

quently, Transport and the Railway filed a second petition asking that the further hearings be cancelled on the ground substantially that the situation had changed because the Railway, pursuant to a sixth section application filed by tariff agent Hughett, had been allowed to become a party to all-motor tariffs (R. 309-311). In denying this petition, the Commission set the proceedings for further hearing, which was held at Dallas, Texas, October 17, 1944 (R. 313-314, 315).

Subsequently, July 5, 1946, a proposed report prepared by two Examiners, was issued (R. 359). Exceptions to the proposed report were filed by Transport (R. 377), an intervener replied, and the parties were heard in oral argument (R. 24-25). On January 22, 1948, the Commission issued its report, 47 M.C.C. 753 (R. 23), wherein, based on adequate findings, supported by ample evidence, it concluded (R. 36) that the certificates issued to Transport in the proceedings listed in Appendix A to the report should be modified so as to authorize the transportation of general commodities *without exception* and "to require that all future operations conducted under these certificates shall be subject to the following conditions and restrictions in lieu of those now set forth therein:

> 1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, the train service of The Texas and Pacific Railway Company, the

Weatherford, Mineral Wells and Northwestern Railway Company, or Texas-New Mexico Railway Company, and, between El Paso and Sierra Blanca, Tex., the train service of Texas and New Orleans Railroad Company, hereinafter called the railways.

2. Applicant shall not render any service to or from any point not a station on a rail line of the railways.

3. No shipments shall be transported by applicant between any of the following points, or through, or to, or from, more than one of said points:—New Orleans, Alexandria, and Shreveport, La., Texarkana, Tex.-Ark., Fort Worth-Dallas, (considered as one), Abilene, Monahans, and El Paso, Tex.

4. All contractual arrangements between applicant and the railways shall be reported to us and shall be subject to revision if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as in the future we may find necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, the train service of the railways.

The Commission, earlier in its report of January 22, 1948, had pointed out that the absence of uniformity in the conditions attached to the sixteen certificates was due to the fact that they had been separately applied for over a period of years, each

covering but a limited segment of Transport's present system of routes; that, for example, the initial application in the title proceeding covered the route between Monahans, Tex., and Lovington; that this was followed a year later by the subnumber 1 proceeding covering the routes in Louisiana, hundreds of miles distant; that then came the application in the subnumber 2 proceeding covering a route in between and likewise physically isolated; and that this process of separate applications continued until ultimately the various segments were connected to form Transport's present extensive system of connecting routes. "In some instances," the Commission said (pp. 755-756, R. 26-27):

> we prescribed but two of the conditions, whereas in others we prescribed a form of each condition. Without exception, however, we prescribed either condition 5 or 5A set forth in Appendix B by which we reserved the right in the future to impose such additional revised conditions as we might find necessary in order to restrict applicant's operation to a service auxiliary to or supplemental of rail service. There can be no doubt that under this reservation we may reexamine the conditions prescribed in the various certificates in question and change, modify, or add to them to the extent we find necessary to the end indicated. *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60. * * * The lack of uniformity in the conditions attached to the

various segments of the routes has resulted not merely in past uncertainty on the part of applicant itself as to the nature of its authorized operations, but has also resulted in the performance by applicant of operations between Shreveport, La., and Gladewater, Tex., and between Wills Point and Big Spring, Tex., in its own name and on its own billing directly for the general public as an independent motor common carrier. Authority over these routes was acquired by purchase and are subject only to conditions 2 and 5A as set forth in Appendix B. The all-motor operations so conducted are contrary in our opinion to the national transportation policy and clearly show a need for reexamination of the conditions in question.

Later, answering Transport's contentions that, to deny it the right to continue in its own name and as an independent motor carrier the service between Shreveport and Gladewater and between Wills Point and Big Spring, would be unfair to the public and would deprive it of a substantial part of the consideration it gave in purchasing the routes, the Commission said (pp. 757-759, R. 29-30):

In the finance proceedings in which the rights covered by the certificates in subnumbers 5, 6, and 8 were acquired and in the section 207 proceedings in which the right covered by the certificates in subnumbers 7 and 22 were granted, applicant's case was built in each instance around an emphasized need for a motor service with which rail service could be

coordinated for the purpose of improving the rail service. * * *.[1]

* * * * *

The evidence introduced is similar in character to that outlined in *Pennsylvania Truck Lines, Inc.—Control—Barker Motor Freight, Incorporated* [1 M.C.C. 101 and 5 M.C.C. 9 and 49], *supra*, and leads to the same conclusions reached in that case, namely:

"The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. * * *"[2]

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[1] The proceedings referred to, subnumbers 5, 6, 7, 8 and 22, are proceedings considered in 47 M.C.C. 753, which had not been reopened and considered in 41 M.C.C. 721. As above shown, the Commission, in 41 M.C.C. 721, speaking of the subnumbered proceedings there reopened, similarly emphasized that the certificates issued Transport were predicated upon a showing that public convenience and necessity required the operations to bring about an improvement in the rail service in moving l.c.l. traffic to be accomplished through the use of trucks instead of cars as a substitution of a more efficient for a less efficient means of service.

[2] In a footnote, p. 758, the report states:

The division in the *Barker* case stated: "Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, non-approved operations are those which otherwise compete with the Railroad itself, those which compete with an established motor carrier * * *. Approved operations

There can be no doubt from the foregoing that the purchases of the described operating rights were approved not for the purpose of permitting applicant to engage in motor operations independent of its proprietary railroad but solely to enable it to render a service auxiliary to or supplemental of rail service. Nor was this intent obscure or uncertainly shown. On the contrary the tenor of our discussion and the conditions (2 and 5A) attached to our grants leave no possibility that applicant or its proprietary railroad could have been misled into consummating transactions which they would not otherwise have done. Condition 5A reserving the right later to impose if necessary other and further restrictions designed to limit the operations to be performed to those auxiliary to or supplemental of railroad service is so definite and unequivocal that applicant's acceptance thereof could not have been under any mistaken impression as to what it was getting and it cannot now be heard to claim that an exercise of such reserved right deprives it of anything which it ever had. Neither is there any merit to the argument that imposition of the restriction would deprive the public of any needed all-motor service or impair the competitive situation. On the contrary, we have no doubt that confinement of applicant and its proprietary railroad to their legitimate field of service, namely railroad service, and their exclusion from com-

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are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called station-to-station service.

petitive all-motor operations will clarify and intensify the competitive situation to the direct benefit of the public.

Referring in its report to Condition 2, the Commission said (pp. 759-760, R. 31-32):

> This condition and condition 3 both are calculated to implement and further the intent of condition 1. It provides that applicant shall not serve or interchange traffic at any point not a station on a rail line of the Railway or of certain other railroads. All of applicant's certificates contain this condition with the exception of certificate No. MC-50544 (Sub-No. 14). The latter authorizes service between Fort Worth, Tex., on the one hand, and sites of a bomber assembly plant and an anchorage and dock space located approximately 6 and 9 miles, respectively, northwest of Fort Worth. Applicant states that these points are in fact served by a spur track branching off the main line of the railway near Benbrook, Tex., immediately west of Fort Worth, and that shipments to the plants in question are billed to Benbrook. Accordingly, condition 2 will be added to this certificate. The condition will be rephrased in each certificate so as to eliminate the words "or interchange traffic at", since a motor carrier may, in any event, interchange traffic only at points it is authorized to serve.

Condition 3, which supplements and implements condition 1, is used in two forms, one requiring a

prior or subsequent movement by rail, (called the rail-haul condition) and the other named key points. Under this restriction shipments may not be transported between key points. Concerning this condition, the Commission said in part (pp. 760-761, R. 32):

> We are convinced that all of applicant's operations should be subjected to a form of condition 3 in order to make certain that in the future they will be auxiliary to, or supplemental of, rail service. While in certain cases in the past we have prescribed a rail-haul condition, we have generally done so where for some reason the key-point restriction would be ineffective. Here there is no reason apparent why the latter type of condition would not be effective. Accordingly, a key-point condition alone will be prescribed covering applicant's entire operation.

Referring in its report to condition 4, the Commission pointed out that it provides that all contractual arrangements between Transport and the Railway shall be reported to it and be subject to revision if and as it finds necessary in order that such arrangements shall be fair and equitable to the parties. Continuing, the Commission said (p. 763, R. 35):

> * * * In matters relating to compensation between applicant and the railway, the latter will in reality be dealing with itself and,

so far as ultimate financial results to the Railway is concerned, it is immaterial what these arrangements may be. It is important, however, that they be properly adjusted if we and the general public are to know or have the means of ascertaining the cost to the railroad of the services performed by applicant. Such information might be important in a rate proceeding or otherwise. See *Kansas City S. Transport Co., Inc., Com. Car. Application,* 10 M.C.C. 221, 240. Accordingly, we shall prescribe condition 4 in all of those certificates not now containing it.

Near the close of its report, the Commission, speaking of Condition 5 and of the fact that certain of Transport's certificates authorize transportation of general commodities subject to exceptions, said (p. 763, R. 35-36):

This condition, either in form 5 or 5A, is now prescribed in each of applicant's certificates and will be prescribed here in order to preserve our right in the future to make such further changes or modifications in the conditions as may be necessary in order to insure that applicant's service is auxiliary to or supplemental of train service.

Certain of the certificates now held by applicant authorize the transportation of general commodities with exceptions, whereas others contain no exceptions. Inasmuch as applicant is authorized to render only substituted service, its authority should be as broad from a commodity standpoint as that of the railway.

> The exceptions to general commodities where they exist will be eliminated.

The order of January 22, 1948, accompanying the Commission's report, 41 M.C.C. 753, provides in part (R. 41, 42):

> *It is ordered*, That the certificates previously issued in said proceedings be, and they are hereby, modified to the extent shown in said report on further hearing; that in all other respects, the provisions of the previous certificates shall remain in full force and effect; and that amended certificates be issued to the Texas and Pacific Motor Transport Company.

A petition for reconsideration, and vacation of the report and order and for oral argument, was filed by Transport April 8, 1948, and was denied May 9, 1949 (R. 43-44).

On July 14, 1949, Transport brought suit (R. 1) in the court below to set aside the orders of January 22, 1948, and May 9, 1949, on the grounds essentially that they transcended the Commission's statutory and constitutional powers and were unsupported by evidence (Par. IX, R. 16-20). Answers were filed by the United States (R. 45), by the Commission (R. 47), by intervening defendant, Regular Common Carrier Conference of American Trucking Association, Inc. (R. 53) and by intervening defendant, Railway Labor Executives Association (R. 54). Hearing was held before the court on November 11, 1949 (R.

69-144). A certified copy of the record made before the Commission was introduced (R. 72). On November 16, 1949, the court rendered its opinion (R. 164-171) holding the Commission's orders invalid; and, on November 25, 1949, it rendered an amended opinion (R. 172-180) likewise holding the orders invalid. On December 14, 1949, the court entered its findings of fact and conclusions of law (R. 145-148). On the same date the court entered its judgment (R. 180-183) setting aside, and enjoining the United States and the Commission from enforcing, the orders.

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that the Commission did not have authority under Sections 5, 206, 207, and 208 of the Interstate Commerce Act to impose specific conditions confining plaintiff to motor service which was supplemental and auxiliary to rail service by the supplementary proceedings involved here.

2. In holding that the condition in the original certificates that the authority granted shall be subject to such further limitations, restrictions, or modifications as may be found necessary in order to insure that the service shall be auxiliary or supplemental to train service, was not adequate authority for placing the later, more specific, conditions on the certificates here involved.

3. In failing to hold that the condition forbidding to plaintiff the right to perform service under "all-motor" local and "all-motor" joint rates with connecting motor carriers was merely a redefinition of the authority originally granted and was an expression of the consistent policy of the Commission in respect to railroad-owned motor carriers.

4. In holding that the placing of the conditions on the certificates in question amounted to revocation in whole or in part of said certificates.

5. In holding that plaintiff's operation is and has been auxiliary or supplemental to train service within the definition expressed by the Commission and as understood by the plaintiff.

6. In holding that although the findings required by Section 213 of the Motor Carrier Act of 1935 and its re-enacted provisions in Section 5(2)(a) and (b) of the Interstate Commerce Act were appropriately made in the Commission's reports and orders granting said certificates, that nevertheless such action represented finality of action on the part of the Commission.

7. In holding that the restrictions imposed on plaintiff's certificates are repugnant to the express terms of the statute, Section 203 (a) (14).

8. In holding that the operations of the railroad-owned motor carrier involved here must be the same as that of a regular common carrier by motor vehicle and cannot be restricted

to the type of service intended by Section 5 (2) (a) and (b) of the Act, namely a coordinated motor-rail service which would "enable such carrier [the railroad] to use service by motor vehicle to public advantage *in its* [the railroad's] *'operations"* (emphasis supplied), said service being the type to be authorized to railroad-owned motor carriers as is made manifest by Sections 5(2) (a) and (b) of the Act and the legislative history thereof.

9. In holding that complete rights had become vested in plaintiff and that said rights could not be delimited except in a proceeding under Section 212 of the Act.

10. In holding that the Commission's action in its reports and orders of January 22, 1948, and May 9, 1949, unlawfully and in violation of the Fifth Amendment of the Constitution of the United States revoked a substantial portion of plaintiff's certificates and operating authorities and thereby would destroy or materially impair the value thereof.

11. In overruling the objections of the United States to the admission of evidence or testimony which had not been first presented to the Commission for determination of its validity and substantiality.

12. In holding that the Interstate Commerce Commission is without authority to make the orders here in question; in undertaking to substitute its judgment for that of the Commission with respect to transportation questions confided by law to the Commission;

in failing to accept findings of the Commission which were amply supported by evidence; and in failing to hold that the orders of the Commission dated January 22, 1948 and May 9, 1949, are in all respects valid and lawful.

13. In setting aside, annulling, and permanently enjoining the orders of the Interstate Commerce Commission entered respectively on January 22, 1948, and May 9, 1949.

SUMMARY OF ARGUMENT

1. The Commission's action in attaching conditions and limitations on the authority granted to appellee Transport Company was within its power.

The conditions were consistent with the evidence presented in hearings on the application that the service to be established was service auxiliary to, and supplemental of, railroad service, not a new field of service, but an improvement on existing rail service, which would result in a more efficient service to the public and in economy in the railroad operations, thus in the public interest.

The imposition of such conditions has been approved, at least tacitly, by this Court. *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60.

As to the applications under Section 213 of the Motor Carrier Act of 1935 (now Section 5(2)(a) of the Interstate Commerce Act), the Commission would be required to find, as a condition precedent to granting them, not only that the proposed transaction for acquisition by Transport, a subsidiary of the Texas and Pacific Railway Company, of

operating rights of a motor carrier, was consistent with the public interest, but also that it would enable the railroad to use the motor carrier service to public advantage in its operations and would not unduly restrain competition. Such an express finding is a statutory requirement. Thus, the service to be rendered must be a railroad and not a general motor carrier service which is operated independently of the railroad.

The history of the legislation which became Section 213 indicates that what was feared by Congress was acquisition of control of motor carriers by other competing forms of transportation, who might use such control to suppress competition, and curtail or hinder progress in highway transportation.

The action of the Commission here in respect to these conditions also gave effect to the National Transportation Policy declaring the purpose of preserving the inherent advantages of each mode of transportation and to prevent unfair or destructive competitive practices. Transport's assertion of right to indulge in general motor common carrier operations cannot be reconciled with this declared policy and merely emphasizes the need for conditions in the certificates granted.

2. The Commission in originally imposing conditions in the certificates authorizing the operations here involved, followed the consistent administrative practice which it had adopted soon after

the enactment of the Motor Carrier Act of 1935. Its printed reports are replete with cases evidencing this. In *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M.C.C. 101, 5 M.C.C. 9 and 49, the Commission laid down principles and criteria which have since been considered to be governing as giving effect to Congress' purpose both in acquisition proceedings under Section 213 (now Section 5 (2)) and in proceedings under Section 207 (a) for certificates.

This Court in *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60, upheld the imposition of conditions in essential respects similar to those here questioned by appellee.

3. The imposition of the conditions additional to those contained in the certificates originally issued was entirely consistent with the provisions of the original certificates, was embraced within the authority expressly reserved to the Commission by the original certificates, and did not constitute a partial revocation of the certificates.

These certificates provided for service auxiliary to, or supplemental of, rail service. The applications filed for those certificates were made and supported by appellee on the basis that such service was proposed. The appellee got exactly what it applied for, and no more. Hence it is clear that denial of an asserted right to conduct general operations as a motor common carrier could not take anything from appellee that the Commission had granted. The fact that Transport engaged

in such general motor carrier operations without being authorized to do so certainly does not preclude the Commission from affirmatively spelling out in the certificates that such operations are beyond Transport's authority.

ARGUMENT

I

In granting certificates of motor carrier operating authority to railroad-owned applicants, the Commission may not only predicate its grants upon the public need for improved rail service by means of substituted, or closely coordinated, motor service, but, for purpose of giving effect to the national transportation policy, may attach conditions designed to limit the motor carrier service authorized to service that is auxiliary to, or supplemental of, the rail service, including provisions making the certificates subject to such further specific conditions to that end as the Commission may in the future find necessary

In *Motor Bus and Motor Truck Operations,* 140 I. C. C. 685 (1928), the Commission stated (p. 721):

> Efficient and economical management of railroads will to a constantly increasing extent call for the utilization of motor vehicles for short hauls or as feeder or distributing agencies.

In 1930 the Commission undertook an investigation to secure needed information in regard to transportation by motor vehicles, the extent and character thereof, its relation to rail transportation, and the extent of existing coordinated service. This investigation culminated in the report of April 6, 1932, *Coordination of Motor Transpor-*

tation, 182 I. C. C. 263, in which the Commission recommended federal regulation of motor carriers. In dealing with the extent to which rail carriers were then engaged in motor carrier operation, the Commission described a specialized motor carrier operation in substitution for local rail movements of less-than-carload traffic, as follows (p. 336):

> (a) *Substitution of trucks for way trains and terminal switching.*—It is generally recognized that peddler or way-freight operations, as to many points, consume much more time than do trucking movements and that they are costly because of the number of transfers required and the light loading of cars. In many instances the roundabout character of railroad lines adds to the difficulty. With increased highway competition, these drawbacks have become more and more serious. For several years, therefore, a number of railroads have been substituting truck for rail movements of less-than-carload traffic from designated transfer points, including some points specifically set up for the purpose of concentrating freight by rail for truck delivery to outlying stations. In the reverse direction the trucks collect freight for concentration at such transfer points. The distances covered are commonly 15 to 20 miles in either direction from the concentration point. Regular rail rates apply and store-door service is not furnished but frequently the substitution of truck for rail movement is not shown in the

tariff. The time of way-freight trains, which commonly carry a crew of five or six men, is thereby considerably reduced or the length of runs increased, deliveries are frequently made one to two days earlier, a more flexible service is made available, and the number of lightly loaded cars is reduced. By taking care of traffic requiring expedited movement, it is further possible in some cases to reduce train service on unimportant lines from a daily basis to a 2-day basis, and in other cases, by eliminating less-than-carload movements, through trains have been able to take over the carload movements of way trains, eliminating the latter. The requirements of carload traffic and the divergence of highways from the routes of rail lines render it impossible to abandon all local freight-train service.

These two Commission reports were forerunners of the Motor Carrier Act of 1935.[3]

That Congress acted with knowledge that the railroads had been using motor trucks in certain phases of their rail transportation service, and that such use was to the public advantage, is shown from the testimony of Commissioner Eastman before the House and Senate Committees in 1935:

> They [the railroads] are utilizing motor vehicles in their terminal operations and they

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[3] S. 1629 was the bill that ultimately became the Motor Carrier Act of 1935. Both the Senate and House Reports on S. 1629 refer to these reports as forming the basis of the Motor Carrier Act.

have used them as a substitute for way freight service, in some cases. My own view is that there will be found many more ways where they can be used to advantage in combination with railroad service and I hope to see the time when the railroads will utilize these opportunities fully. [Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5262 and H. R. 6016, 74th Cong., 1st Sess., 1935, p. 46.]

My own personal opinion is that the railroads are going more and more to find that they can use trucks and busses to advantage in connection with their own service—*supplement it and substitute for it* where they can do the job better than the rails can do it. [Emphasis supplied.] [Hearings before the Senate Committee on Interstate Commerce on S. 1629, 74th Cong., 1st Sess., 1935, p. 85.]

It is apparent that, as in *Coordination of Motor Transportation, supra,* the use which Commissioner Eastman considered that the railroads could, with advantage to themselves and the public, make of motor trucks and vehicles was the auxiliary or supplemental use thereof in their own operations. He was not recommending that the railroads be allowed to go into the general motor carrier business in competition with their own operations and those of independent motor carriers. And that such was not the intent of the bill as enacted into law is shown by statements on the floor of Congress by those in charge of the legisla-

tion. Chairman Sadowski of the House Sub-Committee on Interstate Commerce said:

> Section 213[4] provides that the Commission shall control the consolidation, merger, and acquisition of control of motor carriers. I will say in this respect that it is the intent, and it is important to the welfare and progress of the motor-carrier industry, that the acquisition of control of the carriers be regulated by the Commission so that the control does not get into the hands of other competing forms of transportation, who might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation. [79 Cong. Rec. 12206.]

Chairman Wheeler of the Senate Committee on Interstate Commerce, speaking of the proviso in section 213 of the bill, said:

> With this limitation, it will be possible for the Commission to allow acquisitions which will make for coordinated or more economical service and at the same time to protect the

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[4] Sec. 213 of Motor Carrier Act, 1935 (now embodied in sec. 5(2) of the I. C. Act) is quoted in full in the Appendix. The general authority which the section placed with the Commission to approve consolidations or acquisitions of motor carriers if it found that the transaction would be consistent with the public interest was subject to the proviso that, if the applicant be a carrier other than a motor carrier (e.g., a railroad), or a company affiliated with such a carrier the Commission shall not give its approval unless it finds "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

public against the monopolization of highway carriage by rail, express, or other interests. [79 Cong. Rec. 5655.]

In 1938, Commissioner Eastman, testifying with respect to proposed amendments to the Motor Carrier Act and referring to the proviso in section 213 of the Act, said:

> The reason for that proviso was that at the time when this act was under consideration by your committee, there was a feeling on the part of many that railroads, for example, ought not be permitted to acquire motor carriers at all. It was pointed out, in opposition to that view, that there were many cases where railroads could use motor vehicles to great advantage in their operations, in substitution for rail service, as many of them are now doing. Many railroad men, for example, feel that the operation of way trains has become obsolete; that the motor vehicle can handle such traffic between small stations much more economically and conveniently than can be done by a way train; and the motor vehicles are being used in that way by many railroads. The same is true of many terminal operations. The motor vehicle is a much more flexible unit than a locomotive switching cars, and it can be used to great advantage and with great economy in many railroad operations. [Hearings before Sub-committee of the Committee on Interstate Commerce, United States Senate on S. 3606, 75th Cong. 3rd Sess., p. 23.]

These remarks of Commissioner Eastman, taken together with the statements of Congressman Sa-

dowski and Senator Wheeler, above quoted, show that there was strong opposition to permitting the railroads to acquire motor carriers at all and that the proviso was intended to do no more than to authorize that the railroads be permitted to acquire motor carriers for use of the motor service in their own operations, principally way-train and terminal operations. Indeed, all the legislative history, including the historical background thereto, confirms this view, as do the early Commission motor carrier reports, since consistently followed.

Although but three of the sixteen certificates of operating authority held by Transport were issued in acquisition proceedings under section 213 of the Act, the operating routes covered were very extensive,[5] and, as stated in the Commission's report of January 22, 1948, 47 M. C. C. 753, 758 (R. 29), Transport, in applying for the certificates, in each instance built its case "around an emphasized need for a motor service with which rail service could be coordinated for the purpose of improving the rail service," introducing evidence in support which was similar in character to that supporting the certificate granted in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M. C. C. 101, 5 M. C. C. 9 and 49. As will be presently shown, in the *Barker* case, involving a pro-

[5] The 3 certificates were issued in No. MC-50544 (sub-nos. 5, 6 and 8), and the operating routes thereby covered are shown in Exhibit "C" to the complaint which is a map (R. 44) portraying Transport's system of operating routes.

posed acquisition under section 213 of motor carrier operating rights and properties by an applicant affiliated with a railroad, the Commission laid down principles and criteria, which have since been considered to be governing, in order to give effect to Congress' purpose, both in acquisition proceedings under section 213 (now section 5 (2)) brought by railroad subsidiaries or affiliates, and in proceedings under section 207 (a) for certificates authorizing applicants of such kind to undertake new operations.

Except for the three certificates above mentioned, the certificates of operating authority held by Transport were for new or originated operations and were, therefore, issued to it by the Commission under section 207 (a) of the Act, and were based on findings that the operations, as specified and limited, were required by public convenience and necessity. Paragraph (b) of section 207 provides that "no certificate issued under this part shall confer any proprietary or property rights in the use of the public highways." Section 208 (a) [6] provides, with respect to any certificate issued under section 206 or 207, that "there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public

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[6] Section 207 (a) and (b) and section 208 (a) are set out in full in the Appendix.

convenience and necessity may from time to time require * * *." In enacting the Motor Carrier Act of 1935, Congress laid down the policy which was to guide the Commission, and that policy has been absorbed into the national transportation policy[7] adopted in 1940. *McLean Trucking Co. v. United States*, 321 U. S. 67, 82. Both policies recognize the desirability of coordinating rail and motor service but at the same time emphasize the need for preservation of the inherent advantages of motor carrier service and the prevention of destructive competitive practices. Accordingly, in issuing certificates to Transport in the section 207 proceedings, the Commission not only based its findings of public convenience and necessity on the showing made of public need for improvement in rail service by means of substituted, or closely coordinated, motor service, but attached conditions designed to limit the motor carrier operations authorized to service of that special type (cf. *I.C.C. v. Parker*, 326 U. S. 60, 69-70), including in each case provisions subjecting the certificates to such further conditions as the Commission might in the future find necessary in order to restrict Transport's operations to service "which is auxiliary to or supplemental of the rail service." *Tex. & Pac. M. Transport Co. Com. Car Application*, 41 M.C.C. 721, 725-726 (R. 265).

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[7] Both the policy declared by Congress in enacting the Motor Carrier Act and the national transportation policy are set out in the Appendix.

In so construing and applying sections 207 and 213 of the Act, the Commission followed the construction which it has from the beginning given those sections in like cases of applications by motor carrier subsidiaries or affiliates of railroads.[8] Early in the first volume of its published motor carrier reports will be found the Commission's first report in the *Barker* case, *supra*, 1 M.C.C. 101, which was an acquisition proceeding under section 213 brought by a motor carrier subsidiary of the Pennsylvania railroad. There, after discussing the extensive character of the operating rights which the railroad subsidiary would acquire, the Commission said, page 109:

> Section 213 of the Motor Carrier Act, 1935, provides with respect to consolidations, mergers, and acquisitions of control that if the applicant be a carrier other than a motor carrier (e.g., a railroad), or a company controlled by or affiliated with such a carrier other than a motor carrier, we shall not give our approval unless we find 'that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.' * * * It is the obvious intent of the act that special safeguards shall surround acquisitions of motor carriers by carriers engaged in other forms of transportation,

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[8] Appendix B, pp. 100-107, *infra*; lists the many reports of the Commission dealing with such cases.

and no doubt railroads were particularly in mind. * * *.

Later on the Commission said, pages 111-112;

The proof is convincing that over some of the routes in quesiton the railroad can "use service by motor vehicle to public advantage in its operations." The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will "unduly restrain competition." On the contrary, it should have the opposite effect.

The railroad does not, however, so far as the routes in question are concerned, propose to confine itself to motor-vehicle service auxiliary to its rail operations. It contemplates also the furnishing of motor-carrier service which would not be associated in this way with rail operations. * * *.

While we have no doubt that the railroad could, with the resources at its command, expand and improve the partnership service and that, so far as numbers are concerned, there is now an ample supply of independent operators in the territory for the furnishing of competitive service, we are not convinced that

> the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with rather than auxiliary to, their rail operations. * * *.
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> * * * * *
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> We have authority to approve the instant transaction upon such terms and conditions as we may find just and reasonable and with such modifications as we may prescribe. * * * Under all the circumstances it seems advisable for us to announce the conditions which must be fulfilled before our approval can be obtained. * * *.

Generally described, the conditions which the Commission prescribed as just and reasonable were (p. 113) that the motor carrier be confined to service auxiliary and supplementary to that performed by the railroad in its rail operations and in territory parallel to the rail lines and that the motor carrier divest itself of all other operating rights.

In the supplemental report in the *Barker* case, 5 M.C.C. 9, it appears that the motor carrier and its parent railroad took steps to comply with the conditions imposed, but that the scope of the operations proposed to be retained were still too broad. Referring to this, the Commission said, pages 11-12:

> The scope of the operations proposed to be retained is broader than intended by the con-

ditions we stated in our prior report. Hence it will be of advantage to the parties in this and later proceedings if we here amplify the meaning of those conditions. Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately serviced by another rail carrier.

Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called "station-to-station" service.

In the same report the Commission said, page 14:

Should the restriction prohibiting service to points which are not Pennsylvania stations make it impracticable or uneconomical to operate over any route, steps may be taken to obtain modification of the terms of the authority granted herein. This can be done by the filing of an appropriate application to modify the terms of the certificate under which operations are then being conducted. If proceedings of this character prove unfruitful from the point of view of the railroad, the latter would be free to take lawful steps to abandon or otherwise dispose of the route. *Indeed, if applicants deem the imposed conditions too onerous, it would appear they*

should refrain in the first instance from exercising the permissive authority granted herein. [Italics supplied.]

Subsequently, the Commission applied the same rinciples and criteria laid down in the *Barker se, supra,* in granting a certificate of public con- nience and necessity under section 207 to an filiate of the Kansas City Southern Railway. *ansas City S. Transport Co., Inc., Com. Car pplication,* 10 M.C.C. 221. Assuming, apparently, at the operating rights to which it would be en- tled under Section 207 would be the same as under ection 213 (now Section 5(2)), the applicant, so e report shows, urged (p. 232):

> that the proposed service will in no sense result in direct competition with existing motor carriers; that it does not propose to invade any new territory and does not expect to create any new or additional traffic nor divert traffic from other transportation agencies, but simply proposes to arrange for the improvement of a common-carrier service which has for many years served the points involved; that based upon the degree of efficiency, adequacy, responsibility, and reliability the proposed service would attain, the existing service by motor vehicle is entirely inadequate; and that the proposed service is a distinct and new type of service in the territory which existing truck operators do not and cannot offer.

In support of its contention that the proposed new type of service was required by *public convenience and necessity* within the standard set by section 207, the applicant, the report further shows (p. 234), relied on decisions of this Court (*Texas* v. *United States*, 292 U.S. 522; *N. Y. Cent. Sec. Corp.* v. *United States*, 287 U. S. 12) sustaining as sufficient for administrative guidance the public interest standard laid down in section 5 (2) as to proposed unifications or acquisitions the Court explained in those decisions that such standard was not a concept without ascertainable criteria but that such criteria or tests as to whether what was proposed was in the public interest were supplied by the new policy set up by the Transportation Act of 1920, and its purposes to ensure adequate transportation service through avoidance of waste, economy and efficiency of operation and best use of transportation facilities.

After referring to and quoting from these decisions as to the criteria entering into the public interest standard of section 5 (2) [9] and, after men-

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[9] The policy of Transportation Act, 1920, was also directed against wasteful competition. *Tex. & Pac. Ry.* v. *Gulf, etc. Ry.*, 270 U.S. 266, 277. It is well settled that whether the standard be that of public convenience and necessity under sections 1(18) or 207 or whether it be that of the public interest under section 5 (2), with which section 213 is now merged, consideration of the purposes of Congress' Transportation policy (first embodied in the 1920 Act and later amplified) is essential to sound construction. (*R. R. Comm.* v. *So. Pac. Co.*, 264 U.S. 331, 344; *I. C. C.* v. *Railway Labor Assn.*, 315 U.S. 373, 376; *I. C. C.* v. *Parker*, 326 U.S. 60, 65, 66, 69; *McLean Trucking Co.* v. *U. S.*, 321 U.S. 67, 81-83, 87-88.

tioning that the l.c.l., or merchandise freight service which the railroad was furnishing was expensive and inefficient and that the proposed use of motor vehicles in coordination with its rail operations would undoubtedly provide a much less expensive and at the same time more expeditious and convenient service for the public, the Commission said, page 235:

> * * * Moreover, it is clear that this co-ordinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by Section 202 (a) of the act, which declares it to be the policy of Congress, among other things, to 'improve the relations between, and co-ordinate transportation by and regulation of, motor carriers and other carriers.' It is also shown by Section 213 (a) (1), which permits a railroad to acquire a motor carrier, provided we find that the acquisition will promote the public interest by enabling the railroad to 'use service by motor vehicle to public advantage in its operations', without undue restraint of competition.

Later, answering contentions of the protesting carriers based on the transportation policy, the Commission indicated that it was in accord with their view that it would be contrary to the purpose thereof of preserving the inherent advantages

of motor transportation if the railroads were allowed to enter into the motor carrier business without any limitation. And, as further evidencing that it thought that the statute does not contemplate entry of the railroads into the general motor carrier field or their engaging in motor service other than of the special coordinated type, the Commission quoted from its report in the *Barker case*, as follows:

> * * * we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. The language of Section 213, above quoted, is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. * * * The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public.

In finding (p. 240) that the operating authority sought by Kansas City Southern Transport Company was required by the public convenience and necessity, the Commission attached conditions numbered 1, 2, 3, 4 and 5, which conditions, except

for the name of the railroad concerned, are the same as the conditions carrying the same numbers, set out at page 4, *supra*.

One of the conditions imposed (condition 3) in the *Kansas City S. Transport Company case, supra*, provided that the substituted, or coordinated, motor service authorized shall be limited to shipments received from or delivered to the railroad under a through bill of lading covering, in addition to movement by truck, a prior or subsequent movement by rail. Later, on January 24, 1941, upon reconsideration by the entire Commission, 28 M.C.C. 5, the requirement of a prior or subsequent rail haul was abandoned and in lieu thereof the so-called "key-point" condition was imposed (see conditions 3B and 3C, p. , *supra*). The "key-point" condition provided that, "no shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Kansas City, Hume and Joplin, Mo., Pittsburg, Kans., Shreveport and Lake Charles, La. * * *" In explaining the reason for the modification, the Commission pointed out (pp. 9-11, incl.) that the requirement of a prior or subsequent rail haul interfered with the economy and efficiency that might be achieved by the substitution of truck for rail service in the very field affording special opportunity for achieving such results, namely, that of way-train service; that the

railroad was as much under obligation to furnish service where the movements were mere short movements between stations as it was in instances of prior, or subsequent, hauls; and that, accordingly, there was as much reason in the one case as in the other to permit the railroad to substitute the more efficient truck service. In further explanation, the Commission stated, in substance, that key points were the larger points on the lines of the railroads between which through trains were operated, with way-train service afforded to and between the smaller intermediate points, and that, since rail service by through trains for the longer hauls between the key points was admittedly economical and efficient, there was no need for substituting truck service therefor. It then said, page 11:

> * * * An appropriate condition will therefore be imposed prohibiting the transportation of shipments by motor vehicle between key points. * * * While the restriction will prohibit applicants from transporting shipments as a common carrier by motor vehicle between key points, it will not prevent such transportation between points intermediate to the key points which does not involve movement between key points, or between a key point and an intermediate point.

The conditions attached by the second report in the case to the operating authority granted were the same as those imposed by the first report except that the key-point conditions, above quoted, was

substituted for condition 3. That is to say, the final report and order imposed conditions 1, 2, 4 and 5 plus the key-point condition. Generally described, condition 1 restricted the service to be performed by the applicant to service which is auxiliary to, or supplemental of, the rail service of the railway; condition 2 forbade the applicant from serving any point not a station on the railway; next came the key-point condition; condition 4 required that all contractual arrangements between applicant and the railway be reported to the Commission and be subject to revision if found by it to be necessary in order that such arrangements be fair and equitable to the parties; and condition 5 made the operating authority granted subject to such further specific conditions as the Commission, in the future might find it necessary to impose in order to restrict applicant's operation to service, which is auxiliary to, or supplemental of, rail service.[10]

The *Barker case, supra,* directly involving section 213 and its proviso, was quoted from and relied on by the Commission in the section 213 acquisition proceedings in which it issued certificates of restricted operating authority to Transport. *T. & P. Motor Transport Co.—Purchase—Johnson,* 5 M.C.C. 89; *T. & P. Motor Transport Co.—Purchase—Southern Transp.,* 5 M.C.C. 653. In a

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[10] These are practically the same conditions as imposed by the report and order in this case. See pp. 72-73, *infra.*

footnote, page 92, of the first report just cited, the Commission said that

> The Division in the *Barker* case stated: "Approved operations are those which are auxiliary *or* supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the Railroad itself, those which compete with an established motor carrier * * *. Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called station-to-station service."

The principles laid down in the *Barker case, supra,* giving effect, as they did, not only to the proviso in section 213, but also to the purposes of Congress' transportation policy of preserving the inherent advantages of motor carrier transportation and prevention of destructive competitive practices, also necessarily [11] entered into the Commission's decisions in the section 207 proceedings in which it issued certificates of restricted operating authority to Transport. In the first such proceeding (*T. & P. Motor Transport Co. Application —Louisiana,* 10 M.C.C. 525, the Commission, citing and relying on the *Barker Case, supra,* together with the *Kansas City Southern Transport case, supra,* after first referring (p. 529) to the proviso in section 213 as showing that the Act contem-

[11] See footnote 9, *supra.*

plated that railroads might conduct motor-vehicle operations only under certain conditions, then referred to the *Barker case*, a section 213 proceeding, and stated that it had there said:

> The proof is convincing that over some of the routes in question the railroad can "use service by motor vehicle to public advantage in its operations." The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will "unduly restrain competition." On the contrary, it should have the opposite effect.

Directly thereafter, continuing with its opinion in the section 207 *T. & P. Motor Transport Case*, the Commission said, p. 530:

> The record warrants the conclusion that public convenience and necessity require the provision by applicant in the considered territory of service supplementary and auxiliary to and coordinated with that of the railway, but it is devoid of proof that there is need for service by applicant which is not required in such coordinated operations. The certificate to be granted to applicant should be limited

> accordingly. The limitations contained in our finding below are similar to those which we have provided in *Kansas City S. Transport Co., Inc., Com. Car. Application,* 10 M.C.C. 221, decided November 12, 1938, and the reasons for such limitations are fully set forth in the report in that case.

Following its decision in the above proceeding, the Commission, in all the later section 207 proceedings, disposed of by reports,[12] in which it issued certificates of restricted and conditioned operating authority to Transport, cited and relied on either both the *T. & P. Motor Transport Case,* just described, and the *Kansas City Southern Transport* case, *supra,* or on one or the other of those cases.

It seems inescapable that the proviso of section 213 (now sec. 5), requiring that, before authorizing as in the public interest an acquisition of a motor carrier (including operating rights) proposed by a railroad or railroad subsidiary, the Commission must find that the transaction will promote the public interest by enabling the railroad to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition, has been soundly construed and applied by the Commission. For one thing,

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[12] Four of the proceedings are only briefly referred to in the Commission's reports under the heading "Cases Disposed Of Without Printed Report," 23 M.C.C. 824, 32 M.C.C. 854, 34 M.C.C. 813, 32 M.C.C. 878.

the proviso's requirement that the Commission must find that "the transaction proposed will promote the public interest by enabling such [rail] carrier * * * to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition" obviously does not mean that, if the Commission cannot so find, it may permit the railroad subsidiary to enter the field of general motor carrier operation. It must mean, rather, that the first prerequisite to the Commission's approval of the proposed acquisition is that the service by motor vehicle be for use by the parent railroad *in its operations,* and that that prerequisite being met, the Commission is then to exercise its administrative judgment in determining whether or not such use would be of advantage to the public and whether or not it would unduly restrain competition.[13] The intent of the proviso is to require a

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[13] For example, if the railroad were to substitute motor vehicle service for through train service between key-points, that would be the use of such service in its operations; but, in contrast to way-train service, through train service between key-points is usually entirely economic and efficient and, therefore, the Commission could not find that the use of motor vehicles in such operations would promote the public interest and to be public advantage. But if the motor operations of the railroad subsidiary were not a part of the railroad's operations at all, it would be a *non sequitur* to consider that the Commission should exercise its administrative judgment to determine whether or not the service by motor vehicle in such operations enabled the parent railroad to use motor service to public advantage in its operations or even to determine whether or not such operations unduly restrain competition. In short, as stated, the statute establishes as a first prerequisite to Commission approval, that the service by motor vehicle be for use by the railroad in its operations.

railroad or railroad subsidiary, proposing to acquire a motor carrier, to make special proof that the transaction is in the public interest, that is, that it would enable the railroad to use service by motor vehicle to public advantage in its operations. *Barker* case, *supra*, 1 M.C.C. at 109, 111; *Rock Island M. Transit Co.* case, 40 M.C.C. 457, 462, 466; *I.C.C.* v. *Parker*, 326 U. S. at 67, footnote 3; *McLean Trucking Co.* v. *United States*, 321 U. S., at 84, footnote 21. It follows that in any acquisition under section 213 (now sec. 5) of a motor carrier proposed by a railroad subsidiary there is always present the basic statutory prerequisite to approval that the service by motor vehicle be for use by the parent railroad in its operations; and that fact, of itself, affords ample notice to such an applicant that it is not entitled to a certificate of operating authority for purposes other than the use by the railroad of the service by motor vehicle in its operations.

To be sure, section 207 does not contain a provision like that in section 213 (now sec. 5), imposing restrictions and requiring special findings in instances where the applicants are railroad subsidiaries. But that section does preclude the Commission from granting a certificate of operating

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It follows that, if the railroad subsidiary were to use the motor vehicle service in other operations, such, for example, as engaged in by independent motor carriers, a statutory presumption exists that such use would unduly restrain competition and is, therefore, forbidden by Congress. Cf. *McLean Trucking* case, *supra*, 321 U.S., at 84, footnote 21.

authority unless it is able to find that the proposed operations are required by public convenience and necessity; and, in instances of applications by railroad subsidiaries, the Commission, in the practical administration of section 207, is confronted with substantially identical obstacles and problems as in cases of applications by railroad subsidiaries under section 213. Like section 1 (18), which forbids the railroads from extending their lines unless authorized by the Commission based on findings that the extension is required by public convenience and necessity, section 207 was enacted by Congress to enable the Commission to control and prevent wasteful competition and destructive competitive practices. Although section 213 (now sec. 5) deals with the acquisition of existing motor carrier operations, which, as acquired by railroad subsidiaries, would presumably be taken out of the field of independent existing competition, nevertheless, the purposes of Congress' transportation policy, declared when enacting the Motor Carrier Act, refute any inference that Congress, while closing the door to railroad suppression of motor carrier competition by means of acquiring through a subsidiary existing motor carrier operations, at the same time left open the unfettered opportunity to do the same thing by means of obtaining through a subsidiary authority to institute new motor carrier operations. So far as opportunity for suppression of competition is concerned, there is little

difference, particularly in the motor carrier field, between the opportunity afforded through the control by a railroad of an already existing motor carrier and that afforded by control of one newly created.

As pointed out in the *McLean Trucking* case, *supra*, page 80, "The national transportation policy is the product of a long history of trial and error by Congress," but, as shown in the same case, pages 81 to 84, the purposes of the policy of Transportation Act, 1920 to ensure adequate transportation service through economy and efficiency of operation, prevention of wasteful competition and best use of transportation facilities, have continued unabated. Added to those purposes in 1935, there were, among others, the purposes of preserving the inherent advantages of motor carrier transportation, the fostering of sound economic conditions in the industry, the prevention of unfair and destructive competitive practices and the coordinating of transportation by, and regulation of, motor carriers and other carriers. In 1940, Congress absorbed the purposes of its 1920 and 1935 policies into its statement then made of the national transportation policy, making plain its purposes of providing for fair and impartial regulation of all modes of transportation while preserving the inherent advantages of each, and restating, among others, its purposes of promoting adequate, economical and efficient service, of preserving

sound economic conditions among the several carriers and the prevention of unfair and destructive competitive practices.

In authorizing the transaction involved in the *New York Central Securities Corp.* case, *supra,* the Commission applied, as tests of whether the transaction was in the public interest, criteria giving effect to the purposes of Congress' 1920 policy, namely, its policy of ensuring and promoting adequate and efficient transportation for the public through economical and efficient operation and best use of transportation facilities. And the criteria so applied received the Court's sanction (287 U. S., at 25). Similarly, in authorizing as in the public interest the consolidation of motor carriers involved in the *McLean Trucking* case, *supra,* the Commission applied the same criteria of improved service, efficiency and economies expected to be achieved by the consolidation. It also gave consideration to the effects of the consolidation on competing motor carriers but, weighing the advantages and disadvantages, the Commission found the balance favored and supported the consolidation as consistent with the public interest. The Court approved the criteria so applied as sound and contemplated by the national transportation policy.[14]

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[14] The appellants in the case urged that the Commission should have considered more particularly the policies of the

The *Kansas City Southern Transport* case, 10 M.C.C. 221, 28 M.C.C. 5, which has already been discussed (pp. 41, 45, *supra*), is the leading section 207 case in which the Commission issued a certificate of public convenience and necessity to a railroad subsidiary. The applicant asked for operating authority to use truck service, in place of rail service, in distributing l.c.l. traffic between key, or break-bulk, stations and the smaller intermediate stations, and also in movements between the intermediate points. When first granting the certificate, the Commission attached, among other conditions, the "prior or subsequent rail-haul" condition which prevented the use of trucks in the movements between the intermediate points. Upon reconsideration, it imposed instead the "key-point" condition, permitting such movements between the intermediate points by substituted truck service (see p. 46, *supra*). In granting the certificate as required by public convenience and necessity the Commission quoted from *Texas & N.O.R.*

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antitrust laws. In rejecting this, the Court said in a footnote, page 84:

> In connection with the consolidation of rail and motor carriers Congress was explicit on the subject of competition in its mandate to the Commission. Fearful of the dangerous potentialities which such coordination might create (see 79 Cong. Rec. 5654-5655, 12206, 12222-12225) Congress prescribed more rigorous requirements for that process than for simple motor carrier consolidations. * * * For a rail carrier to consolidate with a motor carrier, Commission approval requires a finding that the transaction will "be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

Co. v. Northside Belt Ry. Co., 276 U. S. 475,[15] *Texas v. United States*, 292 U. S. 522, and the *New York Central Securities Corp.* case, *supra*, all being decisions giving effect to the purposes of the policy of Transportation Act, 1920, in arriving at criteria determinative of whether new operations or service are required by public convenience and necessity or of whether proposed transactions under section 5 are in the public interest (10 M.C.C., at 234). The decision in the *Northside Belt Ry.* case *supra*, shows that, construing the purposes of section 1 (18)-(22) in light of the purposes of the policy of Transportation Act, 1920,[16] the question of whether a new operation or service is required by public convenience and necessity depends on whether it will serve a useful purpose responsive to public need, whether such purpose can be served as well by existing lines and carriers, and whether

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[15] In referring to *Northside Belt Ry.* case, *supra*, the Commission quoted from this Court's opinion at p. 479 as follows:

"The purpose of paragraphs 18 to 22 is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect them from being weakened by another carrier's operating in interstate commerce a competing line not required in the public interest."

The question, in substance, is whether the new operation or service will serve a useful public purpose responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

[16] As showing that the purposes of section 1 (18) referred to were purposes gathered from Congress' transportation policy see decisions cited (276 U.S., at 479) including *T. & P. Ry. v. Gulf, Colo. & S. F. Ry.*, 270 U.S. 266, 277.

it can be served by the new operation or service proposed by the applicant without endangering or impairing the operations of existing carriers contrary to the public interest. While the decision in the *New York Central Securities Corp.* case, *supra,* in referring to the criteria determinative of whether a proposed acquisition would be in the public interest, lays principal stress on the tests as to whether it would improve the service available to the public, enable economies and better use of transportation facilities, the Court's decision in the *McLean Trucking* case, *supra,* shows that, after motor carriers were brought under the Act and in light of the added purposes of the 1935 policy, it was incumbent upon the Commission to consider, not only the improved service, economy, efficiency, and other advantages expected to result but also the effects on competing motor carriers, on their transportation and other transportation in the areas concerned.

That the Commission in the *Kansas City Southern Transport* case, *supra,* gave consideration to all these factors and certain other relevant purposes added to Congress' transportation policy is clear. Speaking of the proposed use of motor vehicles in coordination with the railroad's rail operation in handling the l.c.l. traffic, it said (5 M.C.C. at 235) that the record left no doubt that the proposed use of motor vehicles would provide a more expeditious, convenient and generally sat-

isfactory service for the public; that, moreover, it was clear that such coordinated rail-motor service would constitute a new type of service, utilizing both forms of transportation to advantage and differing from the service given by the railroad alone or by competing motor carriers alone; and that the fact that Congress contemplated such coordination was made plain in its transportation policy declared in 1935. As to the question (see *Northside Belt Ry.* case, *supra*) whether the useful public service, responsive to public need, which would be served by the new type of service, could not be served as well by existing carriers, the Commission, after discussing the evidence bearing thereon, concluded that that could not be expected; that "in view of the close adjustment of schedules and interchange arrangements which good and dependable service require, as well as the contemplated joint use of stations and employees," it believed that the railroad had sound grounds for its contentions to the contrary.

Since its decision in the *Kansas City S. Transport* case, November 12, 1938, the Commission has adhered to the same principles and criteria in many other section 207 proceedings instituted by applications of railroad subsidiaries. That those principles and criteria are sound seems clear from this Court's decision in *I. C. C.* v. *Parker*, 326 U. S. 60, involving the validity of the Commission order in *Willett Co. of Ind., Inc., Extension—Fort Wayne—Mackinaw City*, 42 M. C. C. 721.

Willett, a wholly owned motor carrier subsidiary of the Pennsylvania Railroad, sought certificates of public convenience and necessity for seven routes extending along the lines of that railroad between Fort Wayne, Ind., and Mackinaw City, Mich. The applications were granted on findings that Willett would render service auxiliary to or supplemental of the Pennsylvania's service in the transportation of less-than-carload freight, the service to be rendered on railroad billings; that the service would be coordinated with the railroad's service and under its supervision; and that the public convenience and necessity required the motor carrier operations. The Commission attached the same conditions as it imposed in the *Kansas City Southern Transport* case, *supra,* 28 M. C. C. 5, which are the same conditions as are imposed by the report and order on further hearing in the case here involved. Respecting the conditions, the Court observed, 326 U. S., at pp. 62-63:

> In accordance with the policy of the Commission in granting certificates to railroad motor carrier affiliates to improve the service of the railroad, the Commission limited the carrier to service which is auxiliary to or supplemental of the rail service of the Pennsylvania. It forbade service to "any point not a station on a rail line of the railroad," and took steps to keep the Commission informed of the contractual arrangements between Willett and the Pennsylvania.

> While the routes paralleled the lines of the Pennsylvania in northern Indiana and the southern peninsula of Michigan, the authorization to Willett forbade the transportation by applicant as a common carrier of any shipments from Fort Wayne, Indiana, to Grand Rapids, Michigan, or through or to or from more than one of said points. The purpose of this limitation was to restrict Willett to transportation truly supplemental or auxiliary to the rail traffic. The two cities are break-bulk or key points. Less-than-carload freight comes to or leaves them in carload lots. When a mixed carload reaches one of these key points, the contents are distributed to the smaller, intermediate points of destination as way-freight by "peddler" cars. The Willett Company seeks to take over this "peddler" work and not to do over-the-road trucking. Such motor-rail coordination has proven successful in improving service and reducing carrier costs.
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> As a further assurance that Willett might not inadvertently have received privileges beyond the Commission's intention to grant, a right was reserved by the Commission to impose such further specific conditions as it might find necessary in the future to restrict Willett's operation "to service which is auxiliary to, or supplemental of, rail service."

The district court, to which competing motor carriers had resorted, had held invalid the Commission's grant of certificates to Willett, saying that there was no proof that the existing motor

carrier service by certificated carriers was or would be inadequate to serve the public need. This Court, pointing out that the Commission had made the requisite section 207 finding that Willett's proposed motor operations were required by public convenience and necessity, said that the question nevertheless remained whether that ultimate finding was based on the proper statutory criteria and had the necessary factual findings to support it. After stating in substance that Congress had, by adopting the standard of public convenience and necessity as determinative of whether new motor operations should be permitted, indicated a continuation of the administrative and judicial interpretation given that standard as previously used to guide the Commission in determining whether new operations or extensions of lines by the railroads should be authorized; that the Commission had assumed, as its duty under the earlier use of the standard, the finding of facts and exercise of judgment to determine public convenience and necessity, which construction had been judicially approved, the Court said, page 65:

> The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. Cf. *Powell* v. *United States,* 300 U. S. 276, 287. This, of course, gives administrative discretion to the Commission, cf. *McLean Trucking Co.* v. *United States,* 321 U. S. 67, 87-88, to draw its

> conclusion from the infinite variety of circumstances which may occur in specific instances. * * *.

Continuing, the Court said that the record established that delivery by motor of l.c.l. freight to way stations was a more efficient and economical method for railroads than by "peddler" car; that the appellee motor carriers did not dispute the Commission's power to determine the public need for the new service but rather its determination authorizing the railroad to render the service through use of its trucking subsidiary rather than by making use of existing motor carriers. The National Transportation Policy, the Court said (at p. 66), requires administration so as to preserve the inherent advantages of each method of transportation and to promote safe, adequate, economical and efficient service.

> Such broad generalizations, while well expressing the Congressional purpose, must frequently produce overlapping aims. In such situations, the solution lies in the balancing by the Commission of the public interests in the different types of carriers with due regard to the declared purposes of Congress. [Citing cases.]
>
> When Congress directed that the act should be administered to preserve the inherent advantages of each mode of transportation, it is abundantly clear that it was not intended to bar railroads from the operation of off-the-rail motor vehicles. * * *.

Immediately following the statement last above quoted, the Court refers to Commissioner Eastman's testimony before the Senate subcommittee in 1938, explaining that the proviso in section 213 was the result of a compromise between opposing views and permitted a railroad to acquire a motor carrier if able to make proof that the acquisition would promote the public interest in a special way, namely, by enabling such carrier to use service by motor vehicle to public advantage in its operations and would not unduly restrain competition. The Court then said that section 213 of the 1935 Act specifically regulated the acquisition of motor carriers by railroads; that provisions for such acquisitions now appear in section 5; and that section 202 (c) (1), part II, of the Act withdraws railroad operation of motor carriers in terminal areas from the scope of motor carrier regulation, leaving such operations under part I. After mentioning these ways in which the Act provided for railroad control and operation of motor carriers, namely, in terminal areas and where able to use the service to public advantage in its operations and without undue restraint of competition, the Court continued, pages 67-68:

> * * * Railroads may, therefore, in appropriate places operate trucks. However, since the preservation of the inherent advantages of motor carriers is of equal importance with efficiency under the national transportation policy, the Commission must weigh the

needs of the railroad against disadvantages to the motor carriers to find the balance of public convenience and necessity in determining whether to grant a railroad application for motor operation where these certificates are required. Cf. *Texas* v. *United States,* 292 U. S. 522, 530.

This the Commission did in its findings and conclusion. It said, p. 168:

> "The motor-carrier service proposed by applicant, operated in close coordination with the railroad's service, will effectuate a reduction in cost, and will result in an increase in efficiency in the transportation over the routes herein considered, which will inure to the benefit of the general public. Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier . . ." 42 M. C. C. at 726.

> * * * The coordination of Willett's line-haul method of operations with the rail service has been explained. The existing schedules of protestants do not fit into the needs of the projected service. Common management of railroad and trucks gave promise of better cooperation than would be obtained by arm's-length contracts or agreements. * * *.

Speaking of appellee's contention that a certificate of convenience and necessity should not be granted to railroads for motor truck operation

when existing motor carriers are able to render the same service, the Court said, pages 69-70:

> * * * Appellants take the position that this precise issue need not be decided in this case. They look upon the application as asking for authority to improve "an existing service." We think that it was for a motor service to improve an existing rail service. Consequently, the issuance of the certificate is subject to all the requirements of any other application for a certificate for operation of motor lines. Since, however, on adequate evidence the Commission found that the motor service sought was of a different character from the existing motor service and not directly competitive or unduly prejudicial to the already certificated motor carriers, 42 M. C. C. 725-26, we hold that the Commission had statutory authority and administrative discretion to order the certificate to issue.

Later, after describing the "key-point" condition, the Court said, page 71:

> This key-point requirement is one factor of differentiation between this certificate and the normal over-the-road motor certificate of convenience and necessity. Other differentiations are found in the limitation of service to rail station points and the condition that the Commission reserved the right to impose such other requirements as might be found necessary to restrict the rail subsidiary to coordinated rail service instead of permitting gen-

eral competition with motor carriers in over-the-road service.

The Court stated that it was, of course, obvious that opportunity existed for limited encroachment upon the over-the-road business of existing motor carriers; that a shipper from one way-station to another might use the railroad motor carrier instead of the motor carrier; that free pickup and delivery service within railroad terminal areas might give a further advantage to the railroad where the motor carrier does not furnish the same service. But, the Court said, pages 71-72:

> * * * If the Commission later determines that the balance of public convenience and necessity shifts through competition or otherwise, so that injury to the public from impairment of the inherent advantages of motor transportation exceeds the advantage to the public of efficient rail transportation, the Commission may correct the tendency by restoration of the rail movement requirement or otherwise.

In the case now before this Court, the decision of the district court, holding the Commission's order invalid, is in considerable part based on its view that the Commission, in issuing certificates to Transport, was without authority to reserve the right to impose such further specific conditions as it might in the future find necessary. This view of the district court ignores the fact, recog-

nized by the above statement, that transportation conditions are never static; that, if the Commission is to care properly for the interests of the public and carriers concerned, it must have the authority to take the steps necessary to meet changed conditions, competitively induced or otherwise. In this connection, a further statement by the Court in the *Parker* case should be emphasized. The Court had pointed out that discretion rests with the Commission to further improvements in transportation, and yet that the Commission, being without authority to establish through routes between rail and motor carriers when it found that a coordinated rail-motor service would improve the service available to the public, it could not accomplish that result by requiring such through routes. This left the only means available to that end, either reliance on voluntary cooperation of independent motor carriers or the use of a motor carrier subsidiary. Since there was evidence supporting such conclusion (pp. 68-69), the Court said it thought that the Commission, in view of the limitations it placed on the railroad's service, was entitled to conclude that the public would be better served by the rail operation than by use of the available motor carrier facilities. However, appellee motor carriers urged in substance that, under that interpretation, in every case of an application by a railroad or its subsidiary, for a certificate to operate a motor line to render service at way-stations, the

Commission would, upon showing that the coordinated service would be more economical, efficient, etc., have power to grant the certificate, provided it imposed the limitations or conditions previously described. In answer the Court said, page 73:

> "* * * This is true. It must be expected, however, that the Commission will be as alert to perform its duty in protecting the public in the maintenance of an efficient motor transportation system as it is in protecting that same public in the successful operation of its rail system. The Commission is trusted by Congress to guard against the danger of the development of a transportation monoply. 49 U. S. C. sec. 5(2) (a) and (b). It has the duty to preserve the inherent advantages of each mode of transportation.

The difference between the *Parker* case and the case now before the Court is that, in the former, the railroad subsidiary was defending its right to perform a closely coordinated l.c.l. service in substitution for way-train service against the contentions of non-railroad motor carriers that even such restricted service was an encroachment on their field of transportation, whereas, in the present case, the railroad subsidiary, having crossed the line of permissible and nonpermissible motor service open to railroads is in effect insisting that it is its right to fully enter into the motor carrier field. Transport supported its applications on the

basis of the economies, more efficient and expeditious service, that would result from the use of motor for train service. It then used the limited authority granted to cross the line into the field of general motor carrier operations. Thus it revealed the trend toward monopoly which Congress feared and guarded against by enacting section 213 (now sec. 5) and by making it the Commission's duty to administer the Act so as to preserve the inherent advantages of each mode of transportation.

II

The Imposition of the Conditions Did Not Invade Any Rights of Transport or Deprive It of Any Rights Which It Ever Had

The district court seems to hold, and Transport to contend, that the Commission was without authority to impose the conditions now attached to the certificates even at the time of their issuance. Whether as to certificates issued under section 213 or those issued under section 207, such holding and contention is, it is believed, fully answered in the preceding section. Principally, the district court's grounds for holding the order invalid appear to be based on the conditions which were added or changed after issuance of the certificates. As shown in the preceding section, the conditions as so added to or changed by the Commission's report and order of January 22, 1948, here involved (for conditions imposed see p. 4, *supra*) are the same conditions as were before this Court in the *Parker* case, *supra,* which were in turn the same conditions as were attached by the Commission to the certificates issued to the railroad subsidiary in the *Kansas City S. Transport* case, *supra,* 10 M.C.C. 221, 28 M.C.C. 5. In Appendix B (R. 38-39) to the Commission's report on further hearing, January 22, 1948, in *Tex. & Pac. Motor Transport Co.,* No. MC-50544 (Sub-Nos. 1 to 12, inc., and 14, 19 and 22), it is shown (see footnote 10, p. , *supra*), that, of the 13 section 207 certificates

held by Transport, 6 (issued in Sub-Nos. 1, 3, 4, 9, 11 and 19) were already subject to conditions 1, 2, 4, and 5 plus either condition 3 or a key-point condition, and that a 7th certificate (issued in Sub-No. 12) was subject to conditions 1, 2 and 5 plus a key-point condition. Of the remaining 6 section 207 certificates held by Transport, 3 of them (issued in title case and Sub-Nos. 2 and 10) were subject to conditions 1, 2, 4 and 5. Examination of the reports concerned shows that the only condition questioned was the so-called "prior or subsequent rail-haul condition" (i.e., condition 3) and that the reason for that was simply that the requirement of such prior or subsequent rail-haul interfered with the realization of the full benefits, inuring to the railroad and the public, that might be secured by substitution of truck for rail service in way-train operations.

While condition 3 permitted the use of truck, in place of rail, service in transporting l.c.l. traffic between key or break-bulk stations and intermediate way-stations, as pointed out by this Court in the *Parker* case, *supra* (p. 70), the objection to the condition, urged by the rail carriers in the *Kansas City S. Transport* case, was that, "since commodities might be offered them at one way-station for transportation to another way-station within ordinary motoring distance," the requirement of a "prior or subsequent rail-haul" prevented the use of truck service for such movements, neces-

sitating the maintaining of rail way-train service for such transportation to comply with their common carrier obligation to transport goods between all stations on their lines. Similarly in the sub-number cases here involved Transport urged the same reasons for doing away with condition 3. For example, in the title case, No. MC-50544, 12 M.C.C. 37, the Commission in response to the same contentions and for the same reasons anticipated the decision later reached in the second *Kansas City S. Transport* case by eliminating condition 3. It did not substitute a key-point condition but, nevertheless, indicated that if future circumstances should warrant it could then attach condition 3, since, among others, it was imposing condition 5, reserving the right to impose such further specific conditions as it might in the future find necessary to restrict Transport's operations to service which is auxiliary to or supplemental of the railroads' service. Although in the other sub-number cases in which the Commission eliminated condition 3 it did not expressly indicate that it might in the future impose either that condition or the key-point condition, it did continue to impose condition 5, reserving the right to impose further specific conditions.

As for the three section 207 certificates not yet discussed, there was attached to two of them condition 2, forbidding the rendering of any service to or from any point not a station on the lines of

the railroad and also condition 5, reserving the right to impose such further specific conditions as the Commission might in the future find necessary to restrict Transport's operations to service auxiliary to or supplemental of the train service of the railroad. Attached to the third certificate there were conditions 1, 4 and 5, but not conditions 2 and 3. The latter certificate (issued in Sub-No. 14) authorized service by Transport between Fort Worth and sites of a bomber assembly plant and anchorage and dock space approximately 6 and 9 miles distant from Fort Worth. A second of the certificates (issued in Sub-No. 7) simply authorized the use by Transport of segments of recently improved highways, and the right to serve the village of Thurber, a station on the line of the railroad. In the circumstances shown in Sub-Nos. 14 and 7 the Commission did not consider it necessary to impose other conditions, but it is clear that upon the showing later made that the routes were parts of Transport's extensive system there was need for imposing uniform conditions throughout.

The District Court appears to have thought that the imposition of the key-point condition was particularly detrimental to Transport. The substitution of that condition for condition 3 was made by the Commission after it had been insisted upon by the railroads for several years in the *Kansas City S. Transport* case and others. And, as above explained, it is of particular advantage to railroads

because enabling them, through subsidiary motor carriers, to eliminate expensive way-train service which they would otherwise have to perform to take care of the transportation of merchandise originating at one point intermediate between key-points and ending at another such intermediate point. For the most part the changes made in Transport's certificates consisted of the substitution or addition of the key-point condition, and whether added or substituted, the effect was the same in that it authorized the substitution of truck for expensive way-train service between such intermediate points.

The three certificates issued to Transport in section 213 acquisition proceedings were at the time of issuance made subject only to condition 2 plus the condition by which the Commission reserved the right to impose in the future such further specific conditions as it might find necessary. Since under that section (now Sec. 5) the Commission is in effect forbidden to grant motor operating rights to a railroad subsidiary except where the service by motor vehicle applied for is for use by the parent railroad in its operations it seems manifest that the statute itself gave ample notice to Transport that any operations authorized had to be conditioned in a way preventing it from engaging in general motor carrier service. Moreover, as stated by the Commission in its report on

further hearing, January 22, 1948, 47 M.C.C. 753 (R. 29-30):

> In the finance proceedings in which the rights covered by the certificates in sub-numbers 5, 6, and 8 were acquired and in the section 207 proceedings in which the rights covered by the certificates in sub-numbers 7 and 22 were granted, applicant's case was built in each instance around an emphasized need for a motor service with which rail service could be coordinated for the purpose of improving the rail service. In authorizing its purchase of those portions of the operating rights (1) of W. A. Johnson, doing business as Johnson Motor Lines, between Abilene and Big Springs, Tex., and (2) of Fort Worth Warehouse & Storage Company, Inc., between Dallas and Abilene and between Eastland, Ranger and Breckenridge, Tex., over regular routes in *Texas & Pacific Motor Transport Company —Purchase—W. A. Johnson*, 5 M.C.C. 89, this division stated at page 92 of the report:
>
> > Evidence as to how these highway and railway operations may be coordinated is similar in character and leads to the same conclusions reached in *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M.C.C. 101, 5 M.C.C. 9 and 49, wherein we approved acquisition of a truck line by a railroad subsidiary. We there indicated the character and scope of approved and disapproved operations.

Again, in authorizing applicant to purchase the operating rights of Southern Transportation Company between Dallas and Wills Point and between Gladewater and Shreveport, over regular routes, in *Texas & Pacific Motor Transport Co. — Purchase — Southern,* 5 M.C.C. 653, it was stated:

> The proposed purchase is another step in the general plan of applicant and the railway toward the development of coordinated truck-and-rail service on merchandise freight in the entire territory served by the railway. The first step in that direction has been accomplished through authorization granted in *Texas & P. Motor Transport Co.—Purchase—Johnson, supra,* as a result of which such service has been inaugurated from Dallas west to Big Spring with beneficial results. The authority herein sought will provide means for in part extending the same service eastward from Dallas to Shreveport. The proposed plan of operation will be identical to that now in effect between Dallas and Big Spring and contemplates the movement of merchandise cars to set-out or concentration points along the line of the railway, from which distribution will be made to the smaller intermediate points by truck. * * *.

In fact, in all the proceedings, whether under section 213 or section 207, in which certificates were issued to Transport, that railroad subsidiary built its case around an emphasized need for a motor

service with which rail service could be coordinated for the purpose of improving the rail service. A reading of the reports brings to mind the testimony of Commissioner Eastman before the Senate subcommittee in 1938 (p. 33, *supra*), in which in explaining that the proviso of section 213 reflected a compromise between opposing views, he stated in substance that there were many who felt that railroads should not be permitted to acquire motor carriers at all, but that, as opposed to that view, there were many railroad men who felt that traffic between way-stations could be handled more economically and conveniently by motor vehicle than by way-trains and that the same was true of many terminal operations. Similarly, Transport, in presenting its applications to the Commission did not urge that it be authorized to engage in general motor service but based its applications on showing of need for motor service coordinated with rail service to the end of improving the rail service. As stated by the Commission in its report of January 21, 1943, *Tex. & Pac. Motor Transport Co.*, 41 M.C.C. 721, 725-726 (R. 264):

> The certificates granted petitioner were predicated upon a showing that public convenience and necessity require operation by it for the purpose of bringing about an improvement in the rail service of the railway in the movement of less-than-carload merchandise traffic to and from small way-stations which were without through-train service.

> This improvement was to be accomplished through the use of trucks, instead of cars moving in way-freight trains, as a substitution of a more efficient for a less efficient means of service. * * * There was no need for another motor carrier to furnish service such as that supplied by existing motor carriers which have no close relation to the operations of the railway. * * * The need for improvement in the rail service of the railway not only forms the basis for the conditions imposed but is the basis upon which operating authority was granted to the petitioner, rather than requiring the railway, if the improvement in its service were to be accomplished, to utilize the service of existing motor carriers. Without this need for improvement in the rail service, there would have been no public need warranting the granting of the certificate."

It should be again emphasized that all of the certificates issued to Transport were made subject to two or more, mostly more, conditions and that all, without exception, were made subject to the condition by which the Commission reserved the right to impose such further conditions or limitations as it might in the future find necessary in order to restrict Transport's operations to service which is auxiliary to or supplemental of the railroads' train service. As shown by this Court's decision in the *Parker* case, *supra*, this condition and the other conditions attached to certificates issued to motor carrier subsidiaries of railroads dif-

ferentiate such certificates from "the normal over-the-road motor certificate of convenience and necessity" (p. 71). And certainly, having in mind the sixteen certificates issued to Transport, all made subject to at least 2 conditions, including the "reserved right" condition, and many of them to 5 conditions, it seems apparent that Transport could not have been misled into the belief that it had been granted authority to engage in general motor carrier service, even putting out of mind that in making its applications to the Commission, it neither asked for such authority nor offered proof of the public need therefor. Referring to the certificates issued to Transport in the section 213 proceedings to which only two conditions were attached, the Commission, in its report on further hearing, January 22, 1948, 47 M.C.C. 753, said, page 759 (R. 30-31):

> "There can be no doubt from the foregoing that the purchases of the described operating rights were approved not for the purpose of permitting applicant to engage in motor operations independent of its proprietary railroad, but solely to enable it to render a service auxiliary to or supplemental of rail service. Nor was this intent obscure or uncertainly shown. On the contrary the tenor of our discussion and the conditions (2 and 5A) attached to our grants leave no possibility that applicant or its proprietary railroad could have been misled into consummating transactions which they would not otherwise have

done. Condition 5A reserving the right later to impose if necessary other and further restrictions designed to limit the operations to be performed to those auxiliary to or supplemental of railroad service is so definite and unequivocal that applicant's acceptance thereof could not have been under any mistaken impression as to what it was getting and it cannot now be heard to claim that an exercise of such reserved right deprives it of anything which it ever had. Neither is there any merit to the argument that imposition of the restriction would deprive the public of any needed all-motor service or impair the competitive situation. On the contrary, we have no doubt that confinement of applicant and its proprietary railroad to their legitimate field of service, namely railroad service, and their exclusion from competitive all-motor operations will clarify and intensify the competitive situation to the direct benefit of the public.

Before the district court, Transport contended that the Commission's action in imposing conditions to which its certificates were not made subject when issued deprived it of valuable property rights and constituted a partial revocation of the certificates contrary to section 212 (a) of the Act, and these contentions were sustained by the district court. But certainly, since Transport was never granted authority to engage in general motor carrier operations and did not even attempt to establish its right to such authority, the attaching

of conditions making certain that Transport's operations would be limited to the service for which alone it sought and obtained authority, was neither a deprivation of property nor a partial revocation of operating rights which it ever had. In *Rock Island Motor Transit Co.—Purchase—White Line Motor Frt. Co.*, 55 M.C.C. 567, the same contentions as to deprivation of property and partial revocation of certificates by the imposition of additional specific conditions were made before the Commission by the motor carrier railroad subsidiary in that case. The acquisition of the certificates of operating authority involved was authorized in section 213 proceedings and like the three such certificates in the present case the only conditions attached at time of issuance to the railroad subsidiary were condition 2 and the "reserved right" condition. Answering the contentions, the Commission said in part, page 592:

> To some extent Transit's position in this respect appears to rest upon the argument already considered that the proposed conditions as they are construed by us are more restrictive than anything originally intended and therefore beyond our reserved authority. This argument already has been discussed and overruled. The proposed restrictions construed as above indicated represent no tightening of any earlier concept, and the only question now is our power to exercise our specifically reserved authority. It is difficult to con-

ceive of a serious challenge of this power. The exercise of a specifically reserved right subject to which investments have been made, does not amount to a deprivation of property or any other right without due process. Neither does it amount to a partial revocation of the operating authority granted by Transit's present held certificate contrary to section 212(a) of the act. That certificate by its very terms always has been subject to our right, if need should be found, to impose specific restrictions. It never granted an unlimited operating right, and imposition now of the proposed restrictions, which will have no effect except to guarantee what was originally intended and should have been understood by Transit, will not take anything away. * * *.

Later the Commission said, pages 591-592:

Arbitrariness; want of evidence; and discrimination.—The charge that the imposition now of restrictions of the type indicated would be arbitrary is apparently but another way of saying that, assuming our power, there is no evidence of record justifying such action. Transit's tariffs clearly hold out an all-motor service not connected with the rail service and at motor rates different from the rail rates. Moreover, the performance of service unrelated to rail service on an extensive scale is freely admitted by Transit.[17] The magnitude

[17] The same character of evidence was present and relied on in the present case, 41 M.C.C. 721, 723-724 (R. 262-263); 47 M.C.C. 753, 757 (R. 26-27).

of such operations and, by the same token, the importance of the invasion by the railroad of the field of all-motor service is graphically shown by its argument above that imposition of the proposed restrictions will damage it to the extent of $500,000 or more in annual revenue. * * *

* * * * * *

The assertion that imposition of the proposed restrictions discriminates generally against motor-carrier affiliates of railroads hardly merits mention. The act itself imposes a special burden of proof on railroad or railroad-affiliates seeking to acquire motor carriers. As more fully set forth in our prior report on reconsideration herein, the national transportation policy and the public interest require that, except in unusual circumstances not here present, railroads with their immense resources and competitive strength shall not be allowed to enter the motor-carrier field and to compete as a motor carrier with others in that field. Motor operations in aid of rail service, so-called auxiliary and supplementary services are, however, allowable subject to restrictions designed to confine them as such. The imposition of such restrictions clearly is not an unlawful discrimination against railroad or railroad-affiliated motor carriers. On the contrary they have been approved and encouraged by the courts in several of the above-cited cases, particularly *Interstate Commerce Commission* v. *Parker*, *supra*.

There was no evidence adduced on the point of confiscation at the hearing in the Commission proceedings. Hence, evidence on that point should not have been received by the district court as though it were conducting a trial *de novo*. *New York* v. *United States,* 331 U.S. 284, 334, 335; *United States* v. *Capital Transit Co.,* 338 U.S. 286, 291.

If, as Transport alleges, it made expenditures in order to conduct a service outside of that granted, it cannot blame the Commission. It has only itself to blame.

III

The Right of the Commission, in Granting Motor Carrier Operating Authority to a Railroad Subsidiary, to Forbid Such an Applicant from Participating in All-Motor Rates and to Require It to Render Service on Railroad Billings and at Rail Rates Is Fundamental to the Commission's Observance of Section 213 (Now Section 5) and of Congress' Mandate That It Administer the Act So as to Preserve the Inherent Advantages of Each Mode of Transportation and Prevent Destructive Competitive Practices

An essential to efficient coordination of motor service with the service of a railroad is that it be rendered on railroad billing, at railroad rates and observing railroad schedules. Equally essential to the Commission's authority, if granting operating rights to a railroad subsidiary at all, is that it limit the service by motor vehicle authorized to use by the railroad in its operations. The testimony of Commissioner Eastman shows that the proviso of section 213 was a compromise between

the views of many that railroads should not be permitted to acquire motor carriers at all and the views of others that the railroads could use motor vehicles to their own advantage and that of the public in some of their operations such as in place of way-train or "peddler" car service or in some terminal operations. And all this was entrusted to the Commission with the intent that it restrict the use by the railroads of motor vehicles to the limited field where they could be used to public advantage in place of train service while at the same time not permitting railroad encroachment on the general field of motor transportation.

True, Transport is a certificated common carrier by motor. It is also true that section 216 (b) makes it the duty of common carriers by motor to establish and observe just and reasonable rates, and section 216 (e) provides that common carriers of property by motor may establish through routes and joint rates with other such carriers and with railroads. But, as stated in many Commission reports, if the railroads were permitted free opportunity to enter the field of motor transportation, they could readily use their extensive financial and soliciting resources in a way that would greatly hamper and retard the development of independent service to the ultimate disadvantage of the public. That this was directly contrary to the intent of Congress seems indisputable.

As for Transport's duty to file just and reasonable rates in performing the service authorized,

one of its witnesses testified at the hearing before the district court (R. 132) that the rates filed by Transport are based upon and are the same as the railroad rates. Most or much of the traffic handled by Transport in substitution for train service is presumably through traffic and, therefore, entitled to rates depending on the whole movement from or to rail origin or destination. In instances, truck service is substituted for rail in making inbound movements to mills or other transit points. While rail and motor carriers *may* establish through routes and joint rates, the Commission is without authority to require their establishment. In the *Parker* case, *supra,* the Court, speaking of this absence of power, said that the Act (326 U. S., at pp. 72-73):

> contains no provision by which the Commission may compel non-rail motor carriers to coordinate their road service with rail service or may compel rail carriers to coordinate their service with motor carriers. * * * In the absence of power to compel coordination between the modes of transportation and in the presence of probable gains in operative efficiency from unified management, we think the Commission, in view of the limitations on the railroad's motor service, is entitled to conclude that the public will be better served by the rail operation than by use of the available motor carrier facilities * * *.

Although the Court is speaking particularly of coordination in service, schedules and use of facili-

ties, it seems clear that control of the rate is important to smooth coordination. In the report of January 21, 1943, in the present case, 41 M.C.C. 721, the Commission said that Transport's "status as a common carrier by motor vehicle is not dependent upon its having direct dealings with the shipping public," citing *Willett Co. of Indiana, Extension—Ill., Ind. and Ky.*, 21 M.C.C. 405. The *Willett* case is the case involved in the *Parker* case, *supra*. In that case (p. 407) the Commission, after stating that Willett's operations are those of a common carrier subject to the Motor Carrier Act, 1935, said:

> Operations would be conducted daily except Sunday under regular schedules coordinated with those of the railroad. Under the proposed plan of operation, the railroad alone would deal with shippers and consignees and would assume responsibility for the freight throughout the entire movement. It would issue bills of lading, publish rates, collect all charges, adjust claims, solicit traffic, and have contacts with the shipping public. The proposed service would be optional with the railroad. The shipper would not know whether a particular shipment would move by truck and would not be authorized to specify such movement.

Cf. *United States* v. *Brooklyn Eastern Terminal Co.*, 249 U.S. 296, 302.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Commission's order attacked in this suit was validly made and was within the Commission's statutory powers; and that the decision of the lower court to the contrary should be reversed and the complaint ordered dismissed.

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OCTOBER 1950.

APPENDIX A

Pertinent provisions of the Interstate Commerce Act, including Section 202 (a) and Section 213 (a) (1) of the Motor Carrier Act, 1935.

Section 202 (a), Motor Carrier Act, 1935 (49 Stat. 543):

> It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

Section 213 (a) (1), Motor Carrier Act, 1935 (49 Stat. 555):

> It shall be lawful, under the conditions specified below, but under no other conditions,

for two or more motor carriers which are not also carriers by railroad to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and/or operation of the properties theretofore in separate ownership; or for any such motor carrier or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock, or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof.

(1) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefore shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the pro-

posed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing. If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided, however,* That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of part I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

National Transportation Policy.

[*Added September 18, 1940.*] [*U.S. Code, title 49, notes preceding secs. 1, 301, 901, and 1001.*] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation

subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Combinations and Consolidations of Carriers.

Sec. 5 (2) (a). It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to op-

erate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to

such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided,* That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

Sec. 5 (9). The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate.

Application for Certificate of Public Convenience and Necessity.

Sec. 206 [*Added August 9, 1935, as amended June 29, 1938, and September 18, 1940.*] [*U. S. Code, title 49, sec. 306.*] (a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway,

or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending

the determination of any such application the continuance of such operation shall be lawful: *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

Issuance of Certificate.

Sec. 207 [*Added August 9, 1935.*] [*U. S. Code, title 49, sec. 307.*] (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however*, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers

may be authorized to engage in special or charter operations.

(b) No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways.

Suspension, Change, Revocation, and Transfer of Certificates, Permits and Licenses.

Sec. 212 [*Added August 9, 1935, as amended June 29, 1938, and September 18, 1940.*] [*U. S. Code, title 49, sec. 312.*] (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204 (c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission

thereunder, or to the term, condition, or limitation of such certificate, permit, or license found by the Commission to have been violated by such holder: *And provided further,* That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of sections 206, 209, or 211, or by virtue of the second proviso of section 206 (a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 211 (c), 217 (a), or 218 (a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(b) Except as provided in section 5, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

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In the

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OCTOBER TERM, 1950

No. 38

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THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, *Appellee.*

No. 39

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v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, *Appellee.*

Appeals from the United States District Court for the Northern District of Texas

---

BRIEF ON BEHALF OF THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, APPELLEE

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OPINION BELOW

The original opinion of the court below is reported in *87 Fed. Supp. 107*. The corrected opinion is not published but is set forth in full, beginning at page 77 as Appendix "B" hereto.

QUESTIONS PRESENTED

1. Whether the Commission's 1948 order revokes, or partially revokes Transport's certificates contrary to statute, particularly sections 203, 206, 207, 212, 216 and 217 of the Interstate Commerce Act by:
   (a) Changing its interpretation of the phrase "auxiliary to or supplemental of rail service" since that phrase was originally used in connection with the issuance of Transport's certificates;
   (b) Imposing new restrictions not originally attached to the certificates.
2. Whether the Commission's 1948 order is supported by any evidence.
3. Whether Transport was accorded due process of law in the proceedings culminating in the 1948 order.
4. Whether the 1948 order unconstitutionally deprives Transport of its property without just compensation.

STATUTES INVOLVED

The statutes involved are sections 5 (2) (a) (b) (c), 203 (a) (14), 206, 207, 208, 212, 216 and 217 of The Interstate Commerce Act as amended and sections 213 and 206 of the Motor Carrier Act, 1935, set out in Appendix "A" at p. 59 *infra*.

STATEMENT

Nature of the Case

In this case a motor carrier operating under interstate common carrier certificates has been granted an injunction restraining enforcement of an Interstate Commerce Commission order which had the effect of requiring: (1) that the motor carrier cease doing business directly with

the public, (2) that it refrain from utilizing motor carrier rates and haul on rail rates only, (3) that it cease interchanging traffic with other common carrier motor carriers, and (4) that it not transport shipments between certain specified points on its authorized routes. For a number of years the appellee had engaged in all of these practices as a matter of course in carrying on its business as a duly certificated interstate common carrier by motor vehicle. The Commission had been kept informed of all of its activities. The restrictive order was entered, some years after final issuance of the carrier's certificates, because the carrier is a wholly owned subsidiary of a railroad: a circumstance disclosed to the Commission some twelve years earlier when the carrier applied for its first certificate. The Commission sought to employ two devices for imposing the delayed restrictions: (1) by imposing "conditions" which had not theretofore attached to certain of the certificates; and (2) by re-defining a term ("auxiliary to or supplemental of rail service") used in other certificates. The appellee contends that the Commission's order violates express provisions of pertinent statutes and that it invades the appellee's constitutional rights.

For a clearer understanding of the case, appellants' statements are supplemented below with some additional details from the record, generally arranged in chronological order.

Transport's sixteen certificates authorize it to "engage in interstate or foreign commerce as a common carrier by motor vehicle." (R. 72;[1] 546, 557, 565, 576, 583, 629, 712, 717, 775, 778, 784, 794, 806, 808, 814 and 816.)

Three of the certificates were issued under section 206 of the Act and involve "grandfather" rights—operating

---

(1) The entire record of the case before the Interstate Commerce Commission was offered in evidence as a single offering, with appropriate explanation: R. 72.

rights purchased with Commission approval from other motor carriers, each of which the Commission found "was, on June 1, 1935, and continuously since has been in bona fide operation as a common carrier by motor vehicle . . ." (June 1, 1935, was the critical date of the Motor Carrier Act of 1935.) (R. 610-11, 710 and 772; 49 Stat. 551, 49 U.S.C. 306.) The only restrictive condition attached to these three certificates at the time of issuance was one limiting the carrier's service to points on the line of its parent railroad. (R. 622, 713 and 776.) Transport calls these its "purchase" certificates.

The other thirteen certificates were issued to Transport on its several applications filed under section 207 of the Motor Carrier Act, 1935 and section 207 of The Interstate Commerce Act. (49 Stat. 551, 49 U.S.C. 307; admitted, R. 45-46.) These conveniently may be called "section 207" certificates. Various conditions attached to them at the time of issuance, generally including a condition limiting Transport's service to that which is "auxiliary to or supplemental of rail service." (R. 547, 559, 565, 576, 583, 779, 785, 795, 806, 809 and 815.)

In all sixteen certificates the Commission undertook to reserve the power thereafter to impose such conditions as it might find necessary to restrict Transport's service to that which is "auxiliary to or supplemental of rail service," but the quoted phrase was not defined in the certificates. (R. 546, 557, 565, 576, 583, 620, 712, 717, 775, 778, 784, 794, 806, 808, 814 and 816.) This phrase was first used in relation to this carrier in the Comission's first decision (May 20, 1937) on one of Transport's applications involving two of the purchase certificates. (R. 701.) For the meaning of the phrase, the Commission cited its earlier decision in *Pennsylvania Truck Lines, Incorporated, Acqui-*

sition of Control of Barker Motor Freight, Incorporated, 1 M.C.C. 101, 5 M.C.C. 9, generally known as the "Barker" case. (R. 704.) Transport introduced in evidence in the court below the reports and orders in the *Barker case.*

In each of the sixteen orders granting Transport's certificates the Commission directed it to comply with section 217 of the Act (49 Stat. 560, 561; 49 U.S.C. 317) requiring publication and filing of tariffs showing its rates. (R. 476, 554, 564, 575, 582, 611, 710, 716, 773, 777, 780, 793, 805, 807, 813 and 816.) Beginning April 1, 1936, Transport filed its own tariffs setting out its own rates. (R. 76, 77, 78, 585.) In the case of the three purchase certificates, one of the Commission's rules required Transport to adopt the rates and tariffs of its motor carrier vendors. (R. 76, 875.) By appropriate notices filed with the Commission in 1938, Transport so adopted the tariffs of its motor carrier vendors with respect to the three routes involved. (R. 76, 884-887.) Also, in connection with the purchase certificates, the Commission directed Transport to comply with section 216 of the Act (49 Stat. 558, 559, 560; 52 Stat. 1240; 54 Stat. 924; 49 U.S.C. 316) [which among other things provides (subsection c) that "Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers . . ."] (R. 611, 710 and 773.)

On July 25, 1939, the Commission handed down a report[1], among other things announcing that motor carriers proposing to use rail service for part of the haul should publish an appropriate rule in a directory (or tariff) authorizing such substitution of service. (Alleged, R. 10; admitted, R. 49.) Originally several of Transport's section 207 certificates were conditioned so as to permit trans-

(1) Substituted Freight Service, 232 I.C.C. 683, 689.

portation only of shipments which also moved by rail either prior or subsequently to the truck movement. (R. 560, 565, 577, 584 and 779.) To comply with this condition in operating under these particular certificates, Transport, with the Commission's permission, published a directory (or tariff) authorizing it to substitute rail for motor service. (R. 83, 209.) In 1941, however, the Commission announced that with respect to operations under certificates conditioned among other things so as to require a prior or subsequent rail haul, it would withdraw its permission to participate in the required tariff unless the holders of such certificates came before it "to have their operating rights determined by the Commission." (R. 59-60.) Transport accordingly filed a petition beginning "This petition is not voluntarily filed" (R. 208) setting forth why it considered itself lawfully entitled to continue its existing operations and tariff participation under the particular certificates involved. None of its purchase certificates were included in this petition. A hearing was held before an examiner on February 11, 1942. (R. 217.)

On January 21, 1943, pursuant to the 1942 hearing, the Commission delivered its first opinion holding that the term "auxiliary to or supplemental of rail service", when used in a motor carrier certificate, authorizes only handling of rail traffic at railroad rates and on railroad billing. (R. 259 at 265.) The holding was made in a directive report, (R. 266) not appealable, embracing only ten of Transport's certificates and not including any of the purchase certificates involving "grandfather" rights. (R. 267-8.)

At first Transport asked for rehearing on this report (R. 268) and the Commission reopened proceedings on eleven of the certificates; omitting, however, the purchase certificates. (R. 306-7.) Later Transport, for assigned

reasons, withdrew its petition for rehearing. (R. 309-311.) The Commission denied it permission to withdraw its petition for rehearing and on August 30, 1944, gave notice that a hearing would be held on all of Transport's certificates (including the three purchase certificates not theretofore involved)

> "... solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to the Texas and Pacific Motor Transport Company." (R. 313 at 315.)

On October 17, 1944, hearing was held before an examiner on the notice above quoted. In addition to Transport, representatives of competing motor carriers, shippers and labor organizations appeared. (R. 315-316.) Both Transport and its adversaries protested the insufficiency of the notice (R. 320, 325) and all parties declined to offer any evidence. (R. 329-330.) The examiner questioned one of Transport's officers for a description of its operations. (R. 333-355.) At the conclusion of the hearing all parties asked that they be given further notice and an opportunity to be heard if the Commission proposed any changes in Transport's certificates. (R. 356-358.)

On January 22, 1948, the Commission, by Division 5, handed down its order: (1) imposing on the certificates to which it had not theretofore attached the "auxiliary to or supplemental of rail service" condition; (2) by context and citation, holding that the meaning of the quoted phrase precluded Transport from dealing directly with the public and issuing its own bills of lading, employing motor rates, or interchanging traffic with other motor carriers on joint motor rates over through routes, and limited it to transportation of rail freight at rail rates; and (3) providing that

Transport should not transport shipments between, nor through, to, or from more than one of eight of the principal points on Transport's route. (R. 23-42.) The last is what the Commission denominates as a "key point" restriction. Most of Transport's certificates theretofore had contained no such restriction. Rehearing was denied by the entire Commission in its order of May 9, 1949. (R. 43-44.) This litigation ensued. (R. 1.)

The trial court found that Transport had invested large sums in its business, in addition to some $87,000 paid for the three purchase certificates; and that while a major part of its revenue came from intrastate operations, interstate business produced some $240,000 per annum. It found that when the certificates were issued the Commission did not intend by the words "auxiliary to or supplemental of train service" to limit Transport to business on rail billings at rail rates without privilege of interchange with other motor carriers; that for some years thereafter Transport issued its own bills and participated in motor carrier tariffs with the Commission's full knowledge; and that the Commission then on its own motion changed the meaning of the phrase in imposing new conditions on the certificates. The court found that this would destroy the value of the certificates and would result in Transport's losing its interstate business which would convert an operating profit to a loss. The court concluded that the Commission had violated the Interstate Commerce Act: (1) by revoking or partially revoking the certificates contrary to section 212(a); (2) by diminishing "grandfather" rights contrary to section 206; (3) by prohibiting Transport from dealing with the public on its own bills of lading contrary to sections 203 and 207; (4) by restricting it to rail rates contrary to sections 216 and 217; (5) by prohibiting interchange with other motor carriers contrary to section 216;

further, that the Commission had acted without evidence and had not accorded Transport due process of law. (R. 145-148; 172-180.)

The court entered judgment (one judge dissenting) setting aside so much of the Commission's order, and enjoining the enforcement or interpretation thereof in such manner, as would prohibit Transport from:

> a. Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carrier motor carriers generally;
>
> b. Interchanging traffic with other common carrier motor carriers on joint motor rates;
>
> c. Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;
>
> d. Transporting traffic to, through, from or between any so-called "key points" on that part of its route covered by interstate certificates of public convenience and necessity, to which no "key point" restriction attached on issuance of such certificates;

or in such manner as would restrict Transport to shipping on rail rates or railroad billing. (R. 180 at 182.)

SUMMARY OF THE ARGUMENT

1. The Commission's insistence that it has the power and duty to restrict Transport to service "auxiliary to and supplemental of rail service" begs the question and obscures the issues. When it used the phrase originally in granting Transport's certificates it meant common carrier truck service on motor bills and rates, limited to rail stations. The Commission deliberately and expressly authorized Transport to issue its own bills of lading and participate in motor rates and tariffs. When it now seeks to forbid that, the Commission violates the principles of

United States and Interstate Commerce Commission v. *Seatrain Lines, Inc.*, 329 U. S. 424. The certificates are in the nature of final orders. The Commission's order imposing new conditions on them would revoke them contrary to section 212(a) of the Interstate Commerce Act. It would deprive Transport of its common carrier status under section 203 of the Act; deprive it of the right and duty of establishing its rates, contrary to sections 216 and 217; and deprive it of the right to interchange with other motor carriers, contrary to section 216. In some instances the order would impair "grandfather" rights, contrary to section 206. Sections 208 and 5(2)(b), in authorizing conditions on certificates and on terms of their purchase, do not contemplate restrictions which would revoke or partially revoke the certificates and violate other sections of the same Act.

None of this is required by that part of section 5(2)(b) of the Act designed to prevent monopoly. Transport could stifle competition in only two ways: (1) by buying its motor competitors out of its field; and (2) by establishing its service and operating at non-compensatory rates, thus forcing competitors out of business. The express provisions of section 5(2)(b) requiring findings in the public interest as a requisite to approval of purchases adequately protects against the first possibility. Section 207, giving the Commission power to grant certificates, and section 216, giving it power to regulate rates, adequately protect against the second possibility. Neither does the Declaration of National Transportation Policy justify the Commission's disregard of express provisions of other portions of the Act. The Commission's construction here of section 5(2)(b) and the declaration of transportation policy does not comport with its consistently established position in other similar cases, including its current decisions.

In *American Trucking Associations, Inc., et al.*, v. *United States, et al.*, 326 U. S. 77, 87, the Court held that rate regulation was not appropriate in certificate proceedings. The Commission has so held repeatedly, including an earlier decision in this case. The Commission's apparent purpose here is to regulate Transport's operations rate-wise in relation to other motor carriers. If the Commission deems this desirable, it should proceed under other sections of the Act; not by imposing the proposed restrictions on Transport's certificates.

2. The Commission's order is not supported by evidence. The evidence adduced in support of the applications for certificate was appraised and finally acted on by findings that public convenience and necessity required Transport's service (including service on its own bills and rates); or by findings that Transport's acquisition of operating rights was consistent with public interest, would not unduly restrain competition, and would enable its parent railroad to use motor service to public advantage. Subsequent hearings were on the Commission's own motion and produced nothing contrary to this evidence. Such evidence as was later adduced showed that continuation of Transport's operations on their original basis was in the public interest. The Commission's order required supporting evidence. *American Trucking Associations, Inc., et al.*, v. *United States, et al.*, 326 U. S. 77, 86.

3. The hearing on which the Commission's order was based was on the Commission's own motion, on a notice which did not fairly apprise Transport of the issues to be developed or the nature of the action contemplated. The insufficiency of the notice is attested by the fact that at the hearing Transport's adversaries whose interests were opposed to Transport's interest protested the notice as

vigorously as Transport did, and joined Transport in declining to introduce evidence, in moving to dismiss the proceedings, and in requesting further notice and opportunity for hearing if any change in the certificates was contemplated. Such notice does not accord due process. *United States ex rel. St. Louis Southwestern Railway Company* v. *Interstate Commerce Commission, et al.*, 264 U. S. 64, 78.

4. So long as it operated lawfully thereunder, Transport had a vested property right in its certificates authorizing it to carry on its business as a common carrier by motor vehicle; and to deprive it of that right otherwise than as provided by statute would deprive it of its property without just compensation.

ARGUMENT

I.

THE COMMISSION'S ORDERS REVOKE TRANSPORT'S CERTIFICATES IN VIOLATION OF STATUTE

A. The Change in the Commission's Intent; Resulting Violation of Sections 203, 216 and 217 of the Act.

The appellants' repeated assertions that the Commission has the right and duty to limit Transport's service to that which is "auxiliary to or supplementary of rail service" begs the question and obscures the issues here presented. The quoted language is not statutory. The description in detail of its operations which Transport actually gave the Commission in its applications, and the detailed description of the service which the Commission gave in granting the applications demonstrate the original meaning of the phrase.

The first application for certificate which Transport filed—the application in the "Title Case", dated January 16, 1936 (R. 434-5)—was heard by a Joint Board whose report was issued on July 3, 1937. Transport had described its operations and had squarely presented the question of what its carrier status would be if its application should be granted. In its July 3, 1937 report, this Board said:

> "The record shows that the applicant in its own name holds itself out to the public to carry for anybody any kind of commodity that is transportable by truck. It appears that the applicant issues bills of lading and expense bills to shippers and receivers; that it owns and operates trucks; that it pays its own claims and bills; and that it contracts directly with local draymen for pick-up and delivery service. While, as stated, applicant is a subsidiary of The Texas and Pacific Railway Company, it is a separate organization and a separate corporation. The truck service covered by the application is an operation which was not subject to the provisions of Part I of The Interstate Commerce Act, and, therefore, applicant falls within the description of 'a common carrier by motor vehicle' as such carriers are defined in Section 203 of the Motor Carrier Act." (R. 472.)

And on March 2, 1939, the Commission considered the Joint Board's report and confirmed its decision on this point:

> "Shipments handled by applicant move under rates published in common carrier tariffs, to which it is a party, and we conclude that it is a common carrier and that a certificate is the form of authority required." (R. 479.)

Thus from the very first Transport has always proposed a service on its own bills of lading, at its own rates. The record abundantly discloses that the Commission understood this. In more than one case the Commission specifi-

cally recited its understanding in granting Transport's applications. In granting a certificate under Transport's second application, on December 2, 1938, the Commission said:

> ". . . its holding out to the public, at least in respect of the kind of service it offers, is as broad as that of the Railway itself. It publishes tariffs and may issue its own bills of lading." (R. 552.)

In conformity with its requirement that Transport comply with section 217, the Commission repeatedly permitted Transport to participate in motor tariffs and required Transport to adopt motor rates of its vendors. On occasion, when effectiveness of motor rates on short notice was desired, the Commission gave the necessary special permission. (R. 76, 77.)

Transport proposed service to points on line of railroad, using joint agents and joint facilities with the railroad, and to some extent coordinating truck schedules with train schedules. It proposed substituting service with the railroad—carrying traffic for the railroad, and having the railroad carry its traffic. It had a contract with the railroad covering these arrangements. That contract was disclosed in connection with the first application Transport ever filed. (R. 479.)

The Commission was fully advised and understood all of this. On issuance of the certificates it knowingly authorized a service embodying all of these features, including Transport's issuing its own bills of lading at its own rates. And the Commission then called this service, with all of these ingredients, "service auxiliary or supplementary to train service."

Transport's present service on its own bills and rates fits exactly the description it gave the Commission orig-

inally when it applied for certificates, and fits exactly the description the Commission originally gave when it granted the applications. The Commission obviously is not accurate when it says that service on Transport's bills at Transport's rates is "independent of" or "disconnected with" rail service. That service is now and always has been limited to rail stations, using joint agents and joint facilities. These were the prime elements of "auxiliary and supplementary" service, from the standpoint of the public interest, when Transport's applications were being approved. For example, in passing on Transport's first application, the Commission in its March 2, 1939 order commented:

> "Interveners in behalf of applicant desire the continuance of the service under consideration because it has effected a substantial improvement in all transportation service to points on applicant's route. The motor carriers which compete with applicant have few freight stations at these points, and the maintenance of joint rail-and-truck stations by the Texas-New Mexico and applicant is a convenience to shippers and consignees, especially those located outside the limits of the points served. The latter shippers and consignees may tender less-than-carload shipments for transportation and call for delivery of such shipments at the joint stations at their convenience." (R. 480.)

In support of its second application for certificate, an important element of Transport's proof of service in the public interest was the fact that the new truck service would have stations attended by local agents for the receipt and delivery of freight: service not generally available from other motor carriers. Thus it would not be necessary for consignees to meet trucks as they passed through. The agents at the established stations would be available for handling claims, for quotation of rates and schedules, and

like matters. (R. 492-493.) And as a part of this same testimony the witness testified further that Transport held itself out to the public as a common carrier ". . . and issues its own bills of lading and publishes its own tariffs." (R. 493.)

In the *Kansas City Southern Transport Company* case so frequently cited by appellants, the Commission in 1938 recognized that "joint use of stations and employees" was an important element of the proposed "auxiliary and supplemental" service which was in the public interest. (10 M.C.C. 221 at 236.)

Transport undertakes here to do nothing more than continue the practices which the Commission, on full advice, found to be in the public interest and intentionally authorized on issuing the certificates—practices which conform in detail to the Commission's and Transport's concept of "auxiliary and supplementary service" as of the time the certificates were issued.

Each of Transport's sixteen certificates authorizes it to "engage in interstate or foreign commerce as a common carrier by motor vehicle." All of the certificates required Transport to render "reasonably continuous and adequate service *to the public*." (Emphasis supplied.) When the three purchase certificates were issued the Commission did not impose on them any condition using the phrase "auxiliary or supplementary to rail service." In its report authorizing the certificates the Commission expressed its intention "to ensure that the service shall be auxiliary or supplementary to the train service . . ." (R. 706.) To carry out this intent the only condition actually imposed on the certificates was one limiting the service to points on the railroad. (R. 622, 713 and 776.) In each instance the Commission did undertake to reserve power thereafter to impose

further restrictions to insure that the service should be auxiliary and supplementary to train service. But the context of its reports and the earlier decisions therein cited and the wording of the certificates themselves make it clear (in harmony with the trial court's finding No. 4, R. 145-6) that when these certificates were issued, the Commission meant by this phrase of its own invention only that the rail subsidiary should confine its truck service to points located on the railroad. There was every assurance that the Commission's reservation of power to impose future "conditions" meant only conditions which would keep the operations as they then were—limited to rail stations, but including service on Transport's motor bills at motor rates.

The Commission cites and quotes copiously from two of its reports in the *Barker* case to sustain its assertion that there has been no change in its intent in using the words "auxiliary or supplementary to train (or rail) service." These reports are lengthy, but Transport introduced them in evidence. (R. 72; 818, 832.) Transport must and does invite their reading to support its assertion that nothing in them indicates that the phrase in question limits the motor service involved to shipments on rail billing at rail rates, or precludes the motor carrier from issuing its own bills, utilizing its own rates and interchanging traffic with other motor carriers. A fair short statement of the pertinent content of the *Barker* case is this: A motor subsidiary of The Pennsylvania Railroad Company sought to acquire an extensive truck line system. The greater portion of the truck routes paralleled the lines of the railroad or traversed territory served by it; but some of the routes extended into territory not served by the railroad. The Commission said that the rail subsidiary could buy the truck line system; but that its service should be auxiliary

or supplementary to the rail service of the Pennsylvania, and truck operations in territory not served by the Pennsylvania could not be considered auxiliary or supplementary to the rail service. Therefore it ordered the rail subsidiary to abandon or dispose of those portions of the routes extending into territory not served by the Pennsylvania, and ordered that the authority granted should "not be construed to include the right of rendering service from, to, or the interchanging of traffic at, any point other than a station on The Pennsylvania Railroad Company; . . . " (R. 843.)

Heretofore the Commission has entertained the same view that Transport holds on the proper interpretation of the term invented in the *Barker* case. Even in 1943, in the case of *Southern Pacific Company-Control* (etc.,) 39 M.C.C. 441 at 447 (R. 72-73; 853 at 860) the Commission said:

> ". . . . no condition has heretofore been imposed in acquisition cases limiting the transportation authorized *solely* to transportation in combination with the railroad of the railroad's freight, or *preventing* the motor-carrier operations and service being made directly available to the shipping public apart from and in addition to the railroad's service. The only definite restriction on the operating authority which was imposed in the *Barker Case* and later cases has been designed to confine the motor-carrier operations acquired to the territory of the railroad through limiting the rights so as to authorize service only at stations on the railroad. Although, at times, a condition formerly was sometimes included in acquisition cases to the effect that service to be rendered should be 'auxiliary and supplementary' to the railroad's service, there has been no indication in the reports that such condition was intended to prohibit rendition of all motor-carrier service directly for the shipping public under the

operating rights in *addition to*, in *substitution for*, and in *lieu of*, the parent railroad's service, or to restrict the operation *solely* to one in combination with the railroad's operation; nor is it our understanding that it has been so construed by the carriers. In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon a motor-carrier operation in *addition to*, in *substitution for*, and in *lieu of*, the railroad's operation, as well as upon an operation *in combination* with the railroad." (Emphasis by the Commission.)

In 1942 the Commission decided the case of *Cranberry Corporation-Control and Merger, (etc.)* 38 M.C.C. 113, at 116, and in the course of the opinion cited and described the *Barker* case:

"Following *Pennsylvania Truck Lines, Inc.—Control —Barker M. Frt.*, 1 M.C.C. 101 and 5 M.C.C. 9 and 49, herein called the *Barker case*, we have generally disapproved acquisitions by a railroad or railroad affiliate which would permit motor-carrier service under railroad control to points outside of the natural territory of such railroad, and, in those cases which have been approved, conditions have been imposed limiting the service which might be rendered by motor vehicle to points also served by the railroad."

In 1941, in the case of *Southwestern Transportation Company-Purchase-Hill and Howe*, 37 M. C. C. 83, 85, 87 (R. 844) the Commission described the proposed rail subsidiary service:

"In this connection, by arrangement between applicant and the railroad, covered by tariffs on file with the Commission, if such shipments were tendered to the railroad they could be moved on the railroad's bill of lading in so-called substituted truck service; converse-

> ly, *under similar tariffs and arrangements the railroad transports freight for applicant under applicant's bill of lading.*" (R. 847.) The Commission cited the Barker case, and said: "We believe this evidence shows that the proposed plan of operations would be auxiliary to and supplementary of the train service." (R. 849.) (Emphasis supplied.)

In the 1949 decision in the *Rock Island* case the Commission expressly disapproved the *Southern Pacific* opinion above quoted and commented that these 1943 views "are at variance" with its 1949 views on the subject. (55 M.C.C. 567, at 584-585.) It said that the 1943 decision in the *Southern Pacific Co.*, etc., case, handed down December 23, 1943, must be deemed to have been overruled by the "*Texas & Pacific M. Transport Co. Com. Car. Application*" opinion of January 21, 1943, rehearing denied February 14, 1944. (55 M.C.C. 584-5.) The Commission tries to make the point that *Rock Island* was not entitled to rely on the December, 1943 *Southern Pacific* decision, because the January 1943 opinion in the "Texas & Pacific" case already was "on the books." Our point is that this *is* the "Texas & Pacific" case, and at its earliest opportunity Transport has presented the January 1943 opinion for judicial review. In any event, it seems unlikely that the *Barker* case contains for the careful reader the implications which the Commission now insists it does, when the Commission itself cited and discussed it in the 1941 *Southwestern Transportation Company* case, in the 1942 *Cranberry Corporation* case, and in the 1943 *Southern Pacific* case and reached the conclusions above quoted. Finally (and it seems to Transport, conclusively) the Commission spoke in the *Barker* case itself as late as January 6, 1948. (*Pennsylvania Truck Lines, Inc., Extension-Lebanon, Ohio*, not printed in M.C.C.; R. 73; 867 at 873-4.) The Commission recited the type of service which

had actually been performed by the rail subsidiary under the Barker certificate until 1947, when the carrier voluntarily sought and received imposition of the "auxiliary or supplementary" condition as an addition to its certificate. It appears that until this 1947 modification was made, the carrier performed "two distinct types of service: (1) substituted service for the railroad, and (2) independent motor carrier service for the general public." (R. 873.) The "independent" phase of the service produced 56 per cent of the carrier's revenues in 1942 and a major portion of the carrier's revenue was earned on its own bills of lading until 1947. The Commission did not criticize or admonish the carrier with respect to these operations. Thus did Pennsylvania Truck Lines itself construe and operate under the *Barker* case, which the Commission now insists impliedly restricted the carrier from issuing its own bills on its own rates.

Another of the Commission's decisions which it cites frequently and relies on to sustain its position is *Kansas City Southern Transport Company, Incorporated, Common Carrier Application*, 10 M.C.C. 221, 28 M.C.C. 5. Transport will not further labor the point. It invites reading both reports to sustain its assertion that neither of them contains any intimation that the "auxiliary or supplementary" condition prohibits the carrier from issuing its own bills, using its own rates, and interchanging with other motor carriers, or limits the carrier to carriage of rail shipments on rail billing at rail rates. It is interesting to find that in the later of the two reports (28 M.C.C. 5, January 24, 1941) one of the Commissioners dissented because even with the "auxiliary or supplementary" condition, the carrier was:

> ". . . granted authority to engage in motor-carrier operations and to furnish motor-carrier service which

> are not coordinated with or in any wise tied into rail operations or rail service . . ." (28 M.C.C., 5 at 24.)

This same Commissioner was one of the two who found new meaning in the phrase two years later, in the January 21, 1943 report in Transport's case. The change in the Commission's "views" sometime subsequent to 1941 is thus strikingly demonstrated.

In each of the earlier hearings when Transport stated that it did not then intend to interchange with other motor carriers, it also stated that it might do so later if a demand for such service developed. (R. 507, 742.) In 1939, when it determined to establish such interchange, it took the precaution of advising Commission personnel of its plans, and sought advice. Appellants have since deprecated the official weight of the advice it received. But Commissioner Eastman, the Chairman of the division which had passed on all of Transport's certificates up to that time, and an authority of national eminence in transportation, wrote on June 6, 1939:

> "You will understand that I have no authority to decide such questions as a single member of the Commission, and the Commission itself is loath to interpret its decisions, preferring to let them speak for themselves. However, I may say that I find in the conditions imposed in the cases cited no express restrictions that the Transport Company shall not establish through routes and rates with other motor carriers, nor any implied restriction of this character. As at present advised, therefore, I see no reason for believing that the Transport Company may not lawfully interchange traffic with other motor common carriers, provided it complies with the applicable conditions in connection with its handling of such traffic." (R. 239.)

Transport does not offer this as an official decision binding on the Commission. It does offer it as conclusive evidence that when the Commission first imposed the "auxiliary or supplementary" condition on its certificates, the Commission did not intend thereby to prohibit Transport from interchanging traffic with other motor carriers on through routes and rates.(1)

This record contemporary with the issuance of the certificates compels two conclusions. First, the Commission's 1948 report and order is rather incredible in asserting that by its term "auxiliary or supplementary to train service" it always meant that Transport should not deal directly with the general public on its own bills of lading, that Transport should not utilize its own motor rates, that Transport should not interchange traffic with other motor carriers on joint motor rates, and that Transport's service

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(1) Transport's assertion that the Commission must have contemplated interchange with other motor carriers in granting its certificates is subject to one exception, detailed in the interest of accuracy. On March 21, 1942 the Commission handed down a report on Transport's application "Sub. 11" holding that the "auxiliary or supplementary" condition did not permit interchange with other motor carriers. (R. 789.) The Commission did not say that it required rail billing on rail rates—apparently its new theory had not yet evolved that far. That concept, as we have remarked, was first expressed in the January 21, 1943 report. Transport published no rates on the "Sub.11" certificate because the other restrictions prevented the physical movement of substantially all of the available traffic. (R. 77.) Two other certificates were finally authorized subsequent to the March 21, 1942 report—"Sub. 19" (R. 814) and "Sub. 22" (R. 816). The "auxiliary or supplementary" condition was not imposed on "Sub. 22" Transport initially published and filed its own motor rates on "Sub. 19" on December 22, 1941. (R. 77.) No rates were necessary on "Sub. 22" because it was merely an alternate route. (R. 77.) Transport initially published and filed with the Commission its own motor rates on one of its certificates ("Sub. 12") as late as May 11, 1942, and some of these publications of *motor* rates were on short notice with *special* permission from the Commission. (R. 77.) Although this March 21, 1942 report may now be regarded as the forerunner of the January 21, 1943 report, most of the certificates here involved which contained the "auxiliary or supplementary" condition already had been issued when the March 21, 1942 report came out. And even as to the later certificates, the report does not weaken Transport's position. The order portion of this report directed Transport to comply with section 217—that is, to publish and file its rates (R. 793) and the attempted restriction against interchange contravenes section 216 of the Act.

should be limited to shipments for a few specified railroads on railroad bills of lading at rail rates. The second conclusion is that a condition imposing these restrictions on a common carrier certificate is incompatible with section 203(a) (14) of the Act which says that a common carrier is one which holds itself out to the *general public;* is incompatible with section 216(c) which expressly permits interchange with other motor carriers on joint motor rates, and is incompatible with section 217 which requires such a carrier to publish and file its rates.

It is discernible in the Commission's opinion that it has been conscious of and somewhat perplexed by legal obstacles to the accomplishment of its present purpose. There are points at which zealous ingenuity seems to have produced at least inadvertence, if not some lack of candor. For instance, the Commission says:

> "Because the applications were not considered as parts of an over-all scheme of establishing a connected system of routes, we attached to each certificate as it was granted only those conditions which we considered at the time to be necessary." (R. 26.)

But some nine years earlier, in approving Transport's application to make its third purchase of "grandfather" operating rights, and *before any of Transport's certificates had actually issued,* the Commission had said:

> "The proposed purchase is another step in the general plan of applicant and the railway toward the development of coordinated truck-and-rail service on merchandise freight in the entire territory served by the railway." *(Texas & Pacific Motor Transport Company, Purchase,* 5 M.C.C. 653 at 655.) (Not printed in record.)

In its 1948 discussion of the one restrictive condition on the purchase certificates, the Commission rephrases the condition to eliminate "or interchange traffic at." (R. 31-32.) The reason assigned is not impressive: "...since a motor carrier may, in any event, interchange traffic only at points it is authorized to serve." (R. 32.) Probably the Commission finds these words inconsistent with its new policy. The words came naturally and fitted well in 1937 and 1938 when the condition was written. It is certain that the Commission then contemplated a common carrier operation limited to rail points, but endowed with the usual statutory elements including the right under section 216 of the Act to interchange traffic with other motor carriers.

In the court below the Commission seemed to have some difficulty in maintaining its position that it had not in any degree changed its interpretation of the phrase in question. In response to the court's questioning its counsel receded to the position that there might have been some little change in the interpretation, but the change was not material. (R. 118.) Transport submits that a change which takes away from it the rights to ship on its own bills, use its own rates and interchange with other motor carriers is a very material change. Those rights attach statutorily to a certificate for common carriage by motor vehicle. The evidence compels the conclusion that the Commission on full advice granted these certificates without any intention of withholding those rights. As a matter of fact, appellants do not seem to have assigned error directly to the lower court's findings:

> "At the time of their original use in the several certificates, the words 'auxiliary to or supplemental of train service' did not imply more than a restriction limiting the motor carrier service to points on the lines of the parent railroad and its rail subsidiaries;

> and when the several certificates were issued, the Commission did not intend that the quoted words should preclude Transport from issuing its own bills of lading and serving the public generally on motor rates, including joint motor rates on through routes established with other motor carriers."

and,

> "This (1948) interpretation of the quoted phrase was not the Commission's original intent when the several certificates were issued, but rather reflected a change in the Commission's policy in such matters which had developed after the certificates were issued."

(Findings Nos. 4 and 5, R. 145, 146; Assignments Nos. 3 and 7, R. 187 and 198.)

Condition No. 3 of the Commission's 1948 order (R. 36) [1] graphically revokes, or partially revokes, those of Transport's certificates to which no "key point" restriction originally attached. For patent example, the certificate covering that portion of Transport's route from Dallas to Abilene authorizes "... transportation in interstate or foreign commerce as a common carrier by motor vehicle ...

> "Between Dallas, Tex., and Abilene, Tex., as follows: From Dallas (routes described) to Abilene; and Return over these routes to Dallas." (R. 621.)

Under this certificate Transport can and does haul shipments from Dallas to Abilene and from Abilene to Dallas. It could no longer do so if the Commission's 1948 order should become effective. Its maximum hauls under the certificate then would be westward, from Dallas to some indeterminate point east of Abilene, and eastward,

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(1) "3. No shipments shall be transported by applicant between any of the following points, or through, or to, or from, more than one of said points: New Orleans, Alexandria, and Shreveport, La., Texarkana, Tex.-Ark., Fort Worth-Dallas (considered as one), Abilene, Monahans, and El Paso, Tex."

from Abilene to some indeterminate point west of Ft. Worth (which is some 30 miles west of Dallas). Its present certificated right to haul from Dallas to Abilene and return would be revoked. On cross examination Transport's witness testified that this particular restriction would be definitely hurtful to it. (R. 91.)

B. The Commission's Order Violates Section 212 of the Act.

The essential elements of the case here presented to the Court are remarkably like those in *United States and Interstate Commerce Commission* v. *Seatrain Lines, Inc.*, 329 U.S. 424 (91 L.Ed. 396). The Court will recall that there (as here) the Commission had issued to the carrier a certificate in which it recited a reservation of power later to impose additional conditions. Some time after the issuance of the certificate the Commission undertook to impose on it a "condition" which substantially limited Seatrain's service. The Commission denied that its action evidenced any change in policy, and asserted that the new condition actually was necessary to clear up some misunderstanding about its original meaning in the use of a term ("commodities generally") in the certificate. The Court held that the "condition" so materially affected Seatrain's operations that it amounted to an effort to revoke or modify substantially the original certificate, and it declined to accept the Commission's explanation:

> ". . . we are persuaded from Seatrain's applications for its certificates, from the information supplied to the Commission indicating that Seatrain had long transported goods of all kinds loaded in freight cars to consignees other than railroads, from the findings of the Commission, and from the course of the earlier decisions of the Commission regarding Seatrain, that

> the issuance of the original certificate was not an 'inadvertent' error which the Commission's subsequent action was intended to correct. For all these indicate that prior to and at the time of the issuance of the Seatrain certificate it was the understanding of Seatrain and the Commission that its transportation of 'commodities generally' included carriage of freight cars and that carriage of freight cars would not exclude carriage of commodities generally. Moreover, the Seatrain application was not reopened for consideration by the Commission until its decision in Re Foss Launch & Tug Co. 260 Inters Com Rep (F) 103, decided December 18, 1943. There the Commission pointedly ruled for the first time that a certificate to carry 'commodities generally' did not authorize water carriage of loaded or unloaded freight cars—so-called 'car-ferry service.' Thus it seems apparent that the Seatrain proceedings were reopened not to correct a mere clerical error, but to execute the new policy announced in the Foss Case." (329 U.S. 424, 428; 91 L. Ed. 396, 399.)

In *Seatrain* a water carrier was involved, but the Court drew freely on the motor carrier portion of the Act for analogy in reaching its conclusions. It held that when a certificate has been finally granted and time for rehearing has passed, the certificate is not subject to revocation in whole or in part except as specifically authorized by Congress. It pointed out that in connection with motor carrier certificates in such circumstances the Commission itself had held that it was without power to revoke under its general statutory powers to alter previous orders, and could revoke only under section 212(a) of the Act, [49 Stat. 555, 52 Stat. 1238, 54 Stat. 924; 49 U.S.C. 312(a)] citing *Re: Smith Brothers Revocation of Order* (Certificate), 33 M.C.C. 465.

Both statute [section 212(a) of the Act, 49 Stat. 555; 52 Stat. 1238, 54 Stat. 924; 49 U.S.C. 312(a)] and sound reason support this doctrine. An owner of one of these certificates normally invests considerable sums in building up and carrying on the business authorized by the certificate. In a purchase case the buyer may pay a considerable amount to acquire the certificate with Commission consent. (R. 703, 736.) Development of this phase of the transportation system could hardly be expected unless reasonable stability is provided for the rights conferred by such certificates. Neither would it be fair to subject such investments made in good faith to unbridled administrative vacillation. The Commission itself has cited the salutary rule of the *Smith Brothers* case with respect to a motor carrier certificate in which there was a reservation of power to impose subsequent restrictions. Relying on the reservation, an adverse party in *Hudson Bus Transportation Co., Inc., Common Carrier Application*, 46 M. C. C. 9, 19, insisted that a seasonal limitation be imposed on the operations of a carrier's certificate, but the Commission said:

> "As was said in *Smith Bros.* . . . supra, the issuance of the certificate marks the end of the proceeding and, upon the facts before us, we are without power to revoke it in whole or in part."

This holding was affirmed by a New Jersey district court in *Boulevard Transit Lines, Inc.*, v. *United States et al.*, 77 Fed. Supp. 594, 595. See also *Manhattan Coach Lines, Inc., et al.*, v. *Adirondack Transit Lines, Inc.*, 42 M.C.C. 123, 126.

In the *Rock Island* case (55 M.C.C. 567 at 589-590) the Commission concedes at least tentatively that if its present interpretation of the condition amounts to "a new concept

or new construction conceived since the certificate was issued" its 1948 and 1949 orders may be within the purview of the Court's condemnation in *United States, et al. v. Seatrain, Inc.*, 329 U. S. 424 (91 L. Ed. 396.) Apparently the Commission is fairly well committed to the abstract proposition that neither its general powers nor the provisions of section 208 of the Act (49 Stat. 552, 49 U.S.C. 308) permit it to revoke or partially revoke a certificate except for the reasons and under the procedure set out in section 212. (49 Stat. 555, 52 Stat. 1238, 54 Stat. 924; 49 U.S.C. 312.) Admittedly it has not proceeded under that section. (R. 115.) It simply insists that here it does not attempt to revoke. The record does not support that position.

The appellant who intervened below likewise seeks to minimize the materiality of this change in policy. With respect to rates, it says there is no burden in requiring the Railway to file and publish them—that it simply means a substitution of the Railway's name in the tariffs. Appellant oversimplifies. Under sections 216 and 217 of the Act the Commission has broad regulatory powers in the field of rates and tariffs. Its regulations are numerous and not as uncomplicated as appellant would suggest. (For example, see R. 875-884; introduced, p. 76.) The record discloses that in some of the efforts to solve Transport's difficulties, the Railway did become a party to some motor carrier tariffs; but special permission from the Commission was necessary. (R. 84.) And securing this special permission involved a delay of about a year. (R. 310.)

This appellant also suggests that the Railway itself might well have applied for the motor operating authority in the first instance and that Transport's having done so

is somewhat unusual. A large number of Interstate Commerce Commission decisions involving grants of motor common carrier operating authority to rail subsidiaries attests the inaccuracy of the suggestion. (The *Barker* case, for example—the first decided and most cited case in the rail-motor service category.)

The Railway and Transport followed a statutorily permissible course with Commission approval. The pattern suggested by appellant is not statutorily exclusive. Section 213 of the Motor Carrier Act of 1935, (49 Stat. 543), now section 5(2)(b) of The Interstate Commerce Act [54 Stat. 906, 49 U.S.C. 5(2)(b)], makes express provision for rail-controlled subsidiaries to acquire operating rights as motor common carriers. They are also within the purview of Section 207 (49 Stat. 551, 49 U.S.C. 307.) The pattern suggested by appellant cannot be forced here without revoking Transport's common carrier certificates. Transport should not now be criticized for not having adopted a different plan some years ago because it would now be more agreeable with the lately revised views of the Commission and of Transport's competitors. The question of what the Commission might now give Transport, almost as good as but different from what it has, is not properly before the Court. The question is what the Commission *did* give Transport, and whether it can now lawfully be taken away under the facts in this case.

The Commission admits that it has not here attempted to proceed under section 212. The intervenor-appellant does suggest that by reason of Transport's petition of May 20, 1943 (R. 268) the subsequent modifications of its certificates may be valid under section 212, on the theory that

the certificates have been "amended or revoked" "upon application of the holder." We have shown the compulsion under which these proceedings were had. (Statement, p. 6, supra.) The full context of the petition from which appellant extracts in its brief negatives the validity of its suggestion. The suggestion is not realistic. The trial court properly found that the Commission's 1948 order was the result of proceedings held on the Commission's own motion. (R. 146.) No error was assigned to this finding. And even this appellant notes that the purchase certificates were not involved in the petition to which it refers.

C. The Commission Has Curtailed "Grandfather" Rights Contrary to Section 206 of the Act.

The three purchase certificates are of prime importance to Transport because substantially all of its interstate traffic originates or terminates on, or moves over, these routes (R. 81.) The routes are shown in red on the map in Appendix "C" (p. 87 *infra.*)

These purchase certificates conferred on Transport "grandfather" rights—operating rights established by its vendors before passage of the regulatory legislation, and specifically protected by a section of the statute. (Motor Carrier Act, 1935, sec. 206; 49 Stat. 551, 49 U.S.C. 306.) The Commission now denies that the certificates conferred "grandfather" rights (R. 48-49); but its present position is difficult to harmonize with its record contemporary with the certificates. With respect to each of them, when it authorized purchase, the Commission found

> "... that purchase by (Transport) of that part of the operating rights of (vendor) ... including the right (to operate) pursuant to" (or "pending determina-

> tion of") "the 'grandfather' application of (vendor or vendor's predecessor) . . . and the right . . . to any certificate which hereafter may be issued as a result of said 'grandfather' (or, "such") application . . . will promote the public interest by enabling The Texas and Pacific Railway Company to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition . . . " (R. 705; and *Texas & Pacific Motor Transport Company-Purchase-Southern Transportation Company*, 5 M.C.C. 653 at 657, not printed in record.)

In each of the three orders directing issuance of one of these certificates the Commission made the further findings conventional in "grandfather" application cases:

> ". . . that applicant or predecessor in interest was, on June 1, 1935, and continuously since has been, in bona fide operation as a common carrier by motor vehicle in interstate or foreign commerce . . ." (R. 772; substantially identical, 611 and 710.)

Two of these orders specifically recited that application had been made ". . . in accordance with the requirements of Section 206 . . ." (R. 610, 710.) In the third instance, the Commission's examiner said in the course of the hearing:

> "I assume it is well understood that the applicant is buying and the vendor is selling whatever grandfather rights come down?" (R. 748.)

and the answer was, "Yes, sir, that is so stated in the contract." (R. 748.) No certificates theretofore had issued on the "grandfather" applications filed by Transport's predecessors in interest. (Nos. 3 to 9, inclusive, R. 56-57, 61.) The certificates issued to Transport were the ones "issued as a result of said 'grandfather' application(s)." In these orders the Commission also directed Transport to

comply with sections 215, 216 and 217 of the Motor Carrier Act, 1935 (49 Stat. 557, 558, 559, 560; 49 U.S.C. 315, 316 and 317) as a condition to the issuance of the certificates. Section 216 of the cited Act expressly provides (subsection c) that common carriers by motor vehicle may establish reasonable through routes and joint rates with other motor common carriers. Section 217 of the Act requires every common carrier by motor vehicle to publish and file with the Commission tariffs showing its rates.

Section 206 of the Act (49 Stat. 551, 49 U.S.C. 306) under which these certificates were issued contemplates that the operations authorized by the certificates shall be on "substantial parity" with previous operations antedating passage of the Act. See *United States et al. v. Carolina Freight Carriers Corporation*, 315 U. S. 475 (86 L. Ed. 971); *Alton Railroad Company et al.* v. *United States of America, et al.*, 315 U. S. 15 (86 L. Ed. 586); *Noble v. United States of America, et al.*, 319 U. S. 88 (87 L. Ed. 1277.) Under section 213 of the 1935 Act (49 Stat. 543), now section 5 (54 Stat. 905, 49 U.S.C. 5), the Commission had the broadest discretion to forbid Transport's purchase of the operating rights involved, and in fact could approve the purchases only on special findings to be made from evidence introduced at hearings. As we have shown, it heard evidence and made those findings. Admittedly the Commission was proceeding also under section 206. (R. 56-57, 61.) When it approved the purchases it was bound, therefore, to authorize operations on "substantial parity" with the earlier operations of Transport's vendors; and those were operations of common carrier motor carriers issuing their own bills of lading and assessing their own published motor rates.

D. The Commission Is Without Authority to Impose on Common Carrier Certificates Restrictions Violative of Sections 203, 216 and 217 of the Act.

Let it be emphasized that this case does not involve any effort to question the *soundness* of the Commission's expert judgment. Transport disputes only the legality of the Commission's orders, tested against plain statutory provisions. To sustain its authority, the Commission and its companion appellants rely largely on the Commission's own decisions interpreting section 5 of the Act and the Declaration of National Transportation Policy and the Court's decision in *Interstate Commerce Commission, et al., v. Parker, et al.*, 326 U. S. 60 (89 L. Ed. 2051.) When the statutory orbit of the Commission's authority is the question in issue, its own declarations of power should not be controlling. And the questions here presented did not arise, and could not have arisen in the *Parker* case. The point decided was that a rail affiliate applying for a certificate need not go so far as proving inadequacy of existing service to make its case of public convenience and necessity. In considering the Court's comments on the conditions and reservations in the certificate, the positions and contentions of the parties before the Court should be observed. The Commission was defending the validity of its orders. The rail subsidiary was entirely acquiescent in them—in fact it proposed its own "key points" and service only on railroad billing. (42 M.C.C. 721.) The protestants, competing motor carriers, sought to prevent issuance of any certificate; but if one did issue, self interest would prompt them to welcome a maximum of restrictions, rather than to question them. And so the problems in Transport's case could not have been presented for consideration in the *Parker* case. None of the parties suggested, or could have been expected to suggest that the conditions be tested against the specific provisions

of sections 203, 216 and 217 (49 Stat. 558, 559, 560, 49 U.S.C. 316, 317) as being too restrictive; and it is not likely that the Court considered them from that standpoint. When the question actually was presented to the Court in *Thomson v. United States of America, et al.*, 321 U. S. 19 (88 L. Ed. 513) as to the carrier status of a truck operator who issued no bills of lading, solicited no traffic, had no contractual relations with shippers or receivers, and hauled only for a railroad under contract, the Court held that the trucker was not a common carrier. Further, a fundamental distinction is that in the *Parker* case the Commission's order was an initial grant of authority on findings which were being made contemporaneously with the grant. Nothing yet had been given to the applicant and nothing yet had been found with respect to the particular service involved and the public convenience and necessity therefor. There was no attempt to reappraise evidence already acted on nor to curtail certificates already finally issued.

Contrast the foregoing with Transport's case. With respect to each of its certificates, on some date prior to 1943 the Commission heard evidence and found that public convenience and necessity required Transport's service, or that Transport's predecessor in interest had been in bona fide operation before passage of the Act. The service was to be limited to points on the railroad, using joint station facilities, joint agents, and with some truck schedules coordinated with some train schedules. The evidence shows conclusively that the service contemplated was to include carriage on Transport's own billing and on Transport's own rates. In the case of the purchase certificates, it was found that this service would "promote the public interest

by enabling the Texas and Pacific Railway Company to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition . . ." These finally issued certificates supported by these earlier findings are what the Commission here seeks to revoke or materially to diminish. On this the *Parker* case is not in point. The later opinion in *Seatrain* (329 U. S. 424 at 432, 91 L. Ed. 396 at 401) is the case in point, where the Court duly noted the Commission's authority to impose terms and conditions in granting motor carrier certificates, but nevertheless proceeded with its analogy:

> "But, as the Commission has said as to motor carrier certificates, while the procedural 'orders' antecedent to a water carrier certificate can be modified from time to time, the certificate marks the end of that proceeding. The certificate, when finally granted and the time fixed for rehearing it has passed, is not subject to revocation in whole or in part except as specifically authorized by Congress."

The specific authorization by Congress here is section 212 of the Act. (49 Stat. 555, 52 Stat. 1238, 54 Stat. 924, 49 U.S.C. 312.)

The Commission here contends in effect that by virtue of the proviso in section 5(2)(b) of the Act and the Declaration of National Transportation Policy, it has a statutory mandate to limit motor service by rail subsidiaries to service for railroads on rail billings at rail rates. Neither sound reason nor the Commission's long established position in other cases (including its current decisions) supports this thesis.

The legislative history of the Act shows that while there was apprehension lest the motor carrier industry should fall into control of competing forms of transportation and

be strangled, there was also a strong desire that railroads should be afforded full opportunity to participate in the field in order that the public might reap the greatest possible advantage from development of a coordinated transportation service.(1) Conceivably the railroad industry might have strangled the infant motor carrier industry in two ways: (1) by buying up motor competitors without regard for its own need of the motor operations; or (2) by establishing motor operations and carrying them on at uncompensatorily low rates.

The first contingency was taken care of by the proviso in section 5(2) (b) (formerly section 213) which requires specific findings on public interest and restraint of competition, and an express finding that the rail carrier will be enabled to *use* motor service to public advantage.

No such requirements as these were necessary in the case of certificates issued under section 207. A railroad could not accomplish monopoly by merely securing a new certificate for motor operations. It would have to carry on those operations at unreasonably low, uncompensatory rates in order to drive out competition. The Commission could always grant certificates to additional operators, and

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(1) In the hearings on the bill, Frank McManamy, Chairman of the Legislative Committee of the Interstate Commerce Commission, stated that it was the unanimous recommendation of the Commission that railroads "like anyone else," should be given certificates of convenience and necessity to operate competing bus and truck lines, "in order to coordinate the different means of transportation and get the best use out of them." (Hearings on H. R. 6836, before Legislative Committee on Interstate and Foreign Commerce, 73d Congress, 2nd Session, pp. 16 and 22.) Commissioner Eastman explained to the Committee that his bill would permit a railroad to own bus and truck lines and to coordinate these different forms of transportation under one management. (Hearings on S. 1629, S. 1632, and S. 1635, before the Committee on Interstate Commerce, United States Senate, 74th Congress, 1st Session, Part I, page 85.)

See also report of Leo J. Flynn, Attorney Examiner, S. Document 43, 72nd Congress, 1st Session, in which it is stated: "Rail carriers should be permitted the same opportunity to engage in motor vehicle operations and upon the same terms as any other corporation or individual."

it could control unreasonable rates under section 216 of the Act. Thus certain strictures were placed on railroads' purchase of operating rights; but with sound reason their access to them under section 207 was to be "like anyone else." Heretofore the Commission itself has so construed the statutes, and pointedly declined to impose the *Barker* case condition on certificates issued to rail subsidiaries under section 207. See *St. Andrews Bay Transportation Co.-Extension*, 3 M. C. C. 711, 715; *Rock Island, (etc.), Extension*, 31 M. C. C. 643, 645.

The Commission emphasizes to distortion the second of the three findings required by section 5 (2) (b): "... will enable such (rail) carrier to use service by motor vehicle to public advantage in its operation . . ." The Commission here seems to insist that this language requires it to limit the service authorized to some sort of rail service performed by truck, and that it must grant to carriers such as Transport only a nebulous sort of authority to use trucks "to improve 'an existing (rail) service.'" The Court disagreed with that concept in the *Parker case*, and revised it to conform to statute:

> "We think that it was for a motor service to improve an existing rail service. Consequently, the issuance of the certificate is subject to all the requirements of any other application for a certificate for operation of motor lines." (326 U. S. 60, 69; 89 L. Ed. 2051, 2061.)

Properly it may be added that when those requirements have been met and a certificate has been issued, at least to the extent specifically provided by statute the certificate confers the same privileges and duties generally conferred by motor carrier certificates.

The Commission is by no means consistent in its contention here on the construction of section 5 (2) (b) and the

Declaration of National Transportation Policy. The statutory provisions in question make no distinction between passenger motor service and freight motor service. Yet in *Gulf, Mobile and Ohio Railroad Company, Control, etc.*, 40 M.C.C. 767, 776 (June 7, 1946) the Commission emphatically holds that the "auxiliary or supplementary" condition and similar restrictions are not appropriate in passenger motor service cases. In 1945, in a subsequent chapter of the *Southern Pacific* case, the Commission issued a certificate to the rail subsidiary for motor freight service without imposing the "auxiliary or supplementary" condition or similar restriction on 29 of the 108 routes covered. (R. 86, 892.) In 1947, in a subsequent chapter of the *Southwestern Transportation Company* case, the Commission issued an extensive certificate to the rail subsidiary, directly competing with Transport at several points (R. 85) and the certificate is wholly unrestricted in the respects here under consideration. (R. 85, 887.) In 1948, months after it had handed down its January decision in Transport's case, the Commission issued at least three extensive certificates to rail subsidiaries in which service over many of the routes involved was wholly unrestricted in the respects here involved. (The Santa Fe Trail Corporation Company, November 23, 1948, R. 86, 955; Frisco Transportation Company, December 2, 1948, R. 86, 994; Burlington Truck Lines, Inc., September 7, 1948, R. 86, 1007.) This list does not purport to be complete. (R. 86.) It is thus apparent that the long list of its own decisions cited by the Commission to illustrate an alleged uniform imposition of the "auxiliary or supplementary" condition on all motor freight certificates issued to rail subsidiaries actually is a somewhat selected list. Further, it will be found that any of the decisions in the Comission's list which "spell out" the Commission's present interpretation of the "auxiliary or supple-

mentary" condition were handed down after the 1943 report in Transport's case.

What the Commission has tried to do here is to re-create Transport into a species of carrier not provided for by the law. By reason of its current theories on competition (and as we shall show, without benefit of evidence), the Commission here seeks to create a motor common carrier that does not have the statutory characteristics of a mo or common carrier. Solely because the carrier is railroad-controlled, the Commission seeks to allow it to retain common carrier certificates, but to deprive it of the statutory prerogatives conferred by such certificates. In justification the Commission repeatedly cites the Act declaring the National Transportation Policy (54 Stat. 899, 49 U.S.C. notes preceding sections 1, 301, 901). Heretofore the Court has indicated the fallacy of this premise. In *United States of America, et al.* v. *Carolina Freight Carriers Corporation*, 315 U.S. 475 (86 L. Ed. 971) the Court considered the Commission's effort to engraft some novel restrictions on "grandfather" motor carrier certificates. In disapproving, it said:

> "... the Commission in determining the precise territory which may be served by a particular carrier cannot be unmindful of its responsibility to co-ordinate the various transportation agencies which constitute our national transportation system. S. Rep. No. 482, 74th Cong. 1st Sess.; H. Rep. No. 1645, 74th Cong. 1st Sess. This does not mean that the right to the statutory grant may be withheld or cut down because the Commission disapproves of the competitive conditions which may be created if the application is granted...." (315 U.S. 481, 86 L. Ed. 978.)

> "Congress has made a grant of rights to carriers such as appellee. Congress has prescribed statutory standards pursuant to which those rights are to be deter-

mined. Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen.

"Congress has also provided for judicial review as an additional assurance that its policies be executed. That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process. If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away." (315 U.S. 489, 86 L. Ed. 982.)

The Commission would convert a common carrier into a contract carrier. In *Noble* v. *United States of America, et al.*, 319 U.S. 88, 92 (87 L. Ed. 1277, 1281) the Court said of the reverse of this process:

"The result in the present case would be a conversion for all practical purposes of this contract carrier into a common carrier—a step which would tend to nullify a distinction which Congress has preserved throughout the Act."

E. Rate Regulation is Inappropriate in Certificate Proceedings.

It is inappropriate to undertake in certificate proceedings such as these regulation of rates or the creation of a rate differential between rail-controlled motor carriers and other motor carriers. In its July 6, 1938 report approving one of Transport's purchases of a certificate the Commission held:

"The remaining argument respecting the alleged deleterious effect on present motor-carrier connections of Southern" (the vendor) "does not present an issue under section 213. Compare *North East Texas Motor*

> *Lines, Inc.-Purchase-Perkins*, 5 M.C.C. 459. The act contains specific provisions governing the powers of the Commission with reference to the regulation of motor-carrier rates, including joint rates with other types of carriers, and any proposed increases in applicant's rates would be the subject of review in a separate proceeding. Compare *Rock Island M. Transit Co.-Purchase-White Line M. Frt.*, 5 M.C.C. 451." (Texas & Pacific Motor Transport Co., Purchase, Southern Transportation Company, 5 M.C.C. 653 at 656-657.)

Heretofore the Commission has consistently adhered to the rule that:

> "Obviously, in deciding whether public convenience and necessity require the proposed operation the question of rates is not in issue." *(Paddison Extension of Operations—the Dalles, Ore.*, 21 M.C. 324, 327.)

See also *Folse Drayage Co., Inc., Application*, 1 M.C.C. 678, 680; *Harrison & Harrison, Application*, 3 M.C.C. 76, 77; *Lindeman Common Carrier Application*, 29 M.C.C. 183, 185; *Cincinnati N. & C. Ry. Co., Application*, 30 M.C.C. 423, 438.

The Court has agreed with this doctrine. In *American Trucking Association v. United States*, 326 U. S. 77, 86-87 (89 L. Ed. 2065, 2072) a protestant insisted that the prospective certificate holder's operations would violate section 217 of the Act (requiring publication of rates) but the Court said:

> "These are obviously not grounds upon which appellants can base an argument against the grant of a certificate of convenience and necessity."

The Commission's power to control rates is provided for in a different section of the act—section 216—in different proceedings.

It is clear that in 1938 the Commisison did not consider restrictions on bills and rates a matter pertinent to the question of restraint of competition. In authorizing Transport's purchase of a certificate the Commission said:

> "There would be no undue restraint of competition as East Texas (a competing motor carrier) operates over both segments of the route to be acquired, and there are several intersecting and partial-route operators serving, collectively, nearly all of the principal points on each segment." (5 M.C.C. 653 at 656.)

(In its evidence in support of this particular application Transport had testified that it filed its own rates. R. 749; and in compliance with the Commission's rule, it adopted the *motor* rates of its vendor. R. 76, 884-887.)

The Commission's first effort over opposition to impose the restrictions here involved on previously issued certificates was the 1946 report and order in the *Rock Island* case, 40 M.C.C. 457. Three Commissioners dissented, and the spokesman wrote rather bluntly:

> "Even in the discussion in those quotations from the *Barker* case, there is nothing to indicate that the view of auxiliary and supplementary service then held was of a service limited to the transportation of rail freight at rail rates. The phrase was not so specifically interpreted until 6 years later in the *Texas & Pacific* case." (40 M.C.C. 479) . . .
>
> "The carriers and the public generally should not be forced to read into our reports intentions which are not clearly stated therein, or to anticipate that, years after we have given our approval without stating what we mean, we then, on our own motion, and without a hearing, cancel certain of the rights previously authorized to be acquired — on the ground that such was our intention when we first granted the authority. This applies equally to those cases wherein

> a condition was imposed reserving the power to impose future conditions as well as those where no such power was reserved. That condition, when used, referred vaguely to imposition of future restrictions to limit the service to that which was 'auxiliary to, or supplemental of,' train service. At the time that condition was imposed the carriers had no reason to anticipate, from anything stated in the reports, that such power might, at some distant future date, take the form of depriving it of the right to haul all traffic except that of the parent railroad, should they exercise the authority granted." (40 M.C.C. 480.)

Having expressed their views at some length in 1946, the dissenting Commissioners were even blunter in 1948:

> "The further hearing which has now been held resulted in no new or additional evidence, the instant decision, therefore, for all practical purposes being a report on reconsideration only. It affords no basis for the action taken. Although our authority to impose conditions to approval of transactions under section 5 is broad, the action of the majority is not a prescription of conditions to approval of these two section 5 matters; it is a direct revocation of a portion of the certificates of The Rock Island Transit Company in a manner other than as authorized in section 212. The action is taken in order to execute a 'new policy' and is not distinguishable from the action which was condemned by the Supreme Court in the *Seatrain case*." (55 M.C.C. 567 at 598.)

Obviously these comments are as pertinent here as they were in the *Rock Island* case.

II.

THE COMMISSION'S 1948 REPORT AND ORDER IS WITHOUT SUPPORT OF EVIDENCE

The Commission's 1948 Report and Order is supported by nothing but a theory of competition which it has worked

out since granting Transport's certificates. In its answer below the Commission alleged that its order was based on the record made in support of Transport's applications for certificate and the record of the October 14, 1944, hearing. (R. 51.) Presumably, however, the record made at the February 11, 1942, hearing was also available to it. Since the evidence supporting the applications had once been considered and acted on finally by the issuance of the certificates, which are in the nature of final judgments, it seems axiomatic that without something more, the Commission was not at liberty to reappraise this evidence, come to a different conclusion, and modify the certificates accordingly. Transport has not been guilty of deceit, concealment or fraud.

The entire records made at the 1942 and 1944 hearings are in the record here. (R. 217-258, and 315-358.) This evidence does not supply something more (or anything at all) to indicate that Transport's operations are unduly restraining competition or are otherwise not consistent with the public interest. At both hearings such evidence as there was in this field was positively to the contrary. At the 1942 hearing the general manager of Southwestern Motor Freight Bureau, Inc., representing and acting as tariff publishing agent for some 190 motor common carriers, testified:

> "When we received the application of the T. P. Motor Transport to establish joint through rates with the motor carriers, this matter was presented to a meeting of the operators themselves. It happened so that it could be presented at an annual membership meeting to be held in Houston, Texas. The motor carriers have fought the granting of certificates to rail carriers consistently in this territory for operation of motor vehicle over the highways where that was done under convenience and necessity.

"There have been several purchases made by railroads to which there were not any objections. If I recall correctly, the original purchase of the T. P. Motor Transport of the Forwarding, *(sic)* Storage, and Warehouse Company, was not objected to by the motor carrier industry, and it was the consensus of the operators at this Houston meeting that, if the rail carriers were through subsidiaries going to have operating rights over the highways of motor trucks, it was highly desirable that they use the same rates that we used and also have full interchange rights with other motor carriers. In other words, we desired them to conduct it as near as possible as a motor carrier in line with the existing non-controlled motor carrier operators.

"Mr. Daly (counsel representing various individual motor carriers): In so far as their tariffs and rates.

"The Witness: That is right; and we desired joint through rates. I say that because that was discussed specifically. And the present tariff publication as made is highly desirable from the motor carriers' viewpoint. The question of its legality is probably the question before the Commission more than any other thing. However, we do think that, if there is no objection from the shipping public or the competing motor carriers to the continuance of the existing publication, in so far as the Commission may grant such continuance of the existing publication, certainly no one is being hurt." (R. 232.)

As we have shown in the statement (p. 7 supra) and as we shall remark hereafter, at the 1944 hearing shipping interests, competing motor carriers and labor all were represented. They were fully advised of the nature of Transport's operations. All joined Transport in trying to have the proceeding discontinued. Fairly representative of the attitude of some of the parties was a statement by a representative of public and shipping interests of Ft. Worth, Texas. He said that City was "very vitally inter-

ested and affected by any change that might be made in the operations of the T. & P. railroad and the T. & P. Motor Transport Company," and among other things he added:

> "We are satisfied with the operation of these two carriers; we depend on them very largely to get our freight to destinations, and we want them to remain as they are." (R. 357.)

The Commission is not at liberty to promulgate orders such as its 1948 order here without benefit of evidence. In *American Trucking Association, Inc., et al.* v. *United States of America, et al.*, 326 U. S. 77, 86 (89 L. Ed. 2065, 2071-2) the Court considered the basis on which the Commission should proceed in determining whether to grant a motor carrier certificate to a railroad:

> "We have just said in the Parker Case that the Commission must weigh the advantages of improved rail traffic against the injury to the over-the-road motor carriers to determine where public convenience and necessity lies. It is a difficult task to appraise these conflicting interests. It is a problem which should be solved only after the receipt by the Commission under its usual rules of admissibility, of all available material evidence as to the probable effect of the proposals on the operations both of the proponents of and the protestants against the applications . . .
>
> "The discretion of the Commission should be exercised after consideration of all relevant information."

This principle would seem to be of equal application where the Commission undertakes to revoke or substantially modify such certificates previously granted.

The Commission itself in other cases has repeatedly recognized this principle:

> "We may not impose restrictions on interstate rights which are the subject of transfer unless the evidence of record clearly shows that the public interest re-

quires that restriction be imposed by us." *(Greyhound Corporation; (etc.),—Control;* 50 M.C.C. 237 at 242.)

"The determination of questions such as this is a difficult one in all cases and can be made only on the basis of the evidence adduced by the parties to the proceeding. Evidence of a nature to warrant imposition of such a restriction here has not been adduced." *(Scannell, (etc.),—Control;* 50 M.C.C. 535 at 541.)

In handing down the 1948 order in this case the Commission disregarded one of its own rules of evidence:

"It is apparent that, where, as here and in similar cases, the operations proposed to be covered by the certificate of public convenience and necessity to be issued already are lawfully in existence, the problems presented are not identical with those where entirely new operations are proposed under section 207. These operations have been conducted for some time in interstate commerce. Where such is the case and the operations were instituted lawfully, the past continued performance of the transportation is itself evidence of public need for continuance thereof." *(C. & D. Motor Delivery Company — Purchase — Hubert C. Elliott,* 38 M.C.C. 547, 553.)

In basing its order on the evidence adduced by its examiner at the 1944 hearing, the Commission makes the point that Transport there had opportunity to introduce evidence and declined to do so. We shall show that Transport (and all other parties as well) were not fairly apprised of the issues to be met, and that rather persistent inquiry of the examiner produced no more than the suggestion that Transport should "explain what they are doing now . . ." (R. 326.) There seemed little occasion for developing that information — the Commission was abundantly advised of the nature of Transport's operations, as were all other parties to the proceedings. One of the representatives of the public and shipping interests said: "We know what

their operations are." (R. 326-7.) All parties—not Transport alone—declined to offer evidence (R. 330) and practically all of them (including Transport's erstwhile adversaries) specifically asked for further notice and opportunity to be heard if any changes were contemplated in Transport's certificates. (R. 357-358.) Subsequently it has developed that the hearing actually was intended as something in substitute for a section 212 proceeding, with the objective of revoking or materially diminishing the certificates. In the somewhat more conventional section 212 proceeding sanctioned by statute the Commission recognizes where the burden of proof properly lies:

> "No evidence was offered at the hearing by complainant or intervener in substantiation of the allegations in the complaint. Obviously, in the absence of such evidence, we are without any basis for proceeding under either section 204 (c) or 212 (a) of the act. In the instant proceeding, the burden of proof clearly was upon complainant, and the failure of defendants to appear in no wise relieved it of the obligation of proving its allegations." (*Joint N. E. Motor Carrier Association, Inc.* v. *Rose and Welloff*, 43 M.C.C. 487, 488.)

Particularly in the setting of the 1944 hearing the Commission is not warranted in substituting for evidence Transport's failure to offer testimony. The Commission has acted on an economic theory of its own recent development, without evidence or reasonable substitute therefor, and the Court's pronouncement in *Interstate Commerce Commission et al.* v. *Louisville & Nashville Railroad Company*, 227 U. S. 88, 91, (57 L. Ed. 431, 433) is apropos:

> "But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in

accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depend upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficiently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence' (citing cases) or, if the facts found do not, as a matter of law, support the order made."

III.

TRANSPORT WAS NOT ACCORDED DUE PROCESS OF LAW AT THE HEARING OF OCTOBER 17, 1944

The 1944 hearing which constituted the predicate for the Commission's 1948 order was based on the following notice:

> "*And it is further ordered*, that the said matters be, and they are hereby, referred to Examiner David Waters for further hearing on the 17th day of October, A. D., 1944, at 9:30 o'clock a.m. at the Baker Hotel, Dallas, Texas, solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to the Texas and Pacific Motor Transport Company." (R. 314-315.)

The Commission admits that it was not proceeding under section 212 of the Act, and it can hardly be contended seriously that the proceedings were of a character other than proceedings on the Commission's own motion. Transport asserts that the notice given it did not fairly apprise it of the issues to be developed and did not afford it reasonable opportunity to prepare itself to present evidence on those issues: presumably, whether the public interest required that Transport's certificates be changed so as to prohibit it from shipping on its own bills and rates and interchanging with other motor carriers. The validity of Transport's contention here can best be tested by the attitude of its adversaries at the 1944 hearing. Various competing motor carriers were represented, as was the intervenor-appellant. (R. 72; 315-316.) Their interest was that the conditions on Transport's certificates should not in any degree be *relaxed*. (R. 358.) Counsel for one of these competitors was even more insistent than Transport's counsel that the notice was insufficient, and he was particularly persistent in inquiring the purpose of the hearing. (R. 325.) The hearing officer himself said that he had no idea what the Commission would do. (R. 325.) He said he didn't think the Commission suspected Transport of doing anything it was not supposed to do. (R. 325.) (It should be borne in mind here that the Commission was fully advised that Transport had always issued its own bills and used its own motor rates.) He further said if Transport explained its operations and if that satisfied the parties, "probably that would be the end of it." (R. 326.) Neither at the beginning nor at the end of the hearing did any party ask for Commission action—to the contrary, most of them actively joined Transport in seeking dismissal of the proceedings. (R. 326-328.) At the conclusion of the hearing counsel for competing motor carriers of the class repre-

sented by intervenor-appellant asked for further notice and opportunity to be heard if any modification in Transport's certificates was proposed, and the intervenor-appellant expressed opposition to any action relaxing the conditions. (R. 358.) Public and shipper interests asked for further notice and opportunity to be heard if any change was to be made in Transport's operations. (R. 357) Of course Transport requested additional notice and opportunity to be heard if its status quo was to be disturbed, and it indicated the sort of evidence it desired opportunity to offer if change was contemplated. (R. 356.) In spite of the examiner's statements to the contrary, it is clear that only the Commission was the moving party in these proceedings—they were on the Commission's own motion. It was constitutionally obliged to give Transport reasonable notice of the issues it proposed to develop, the area it proposed to explore, and with at least some degree of definiteness, the action it might take. In *United States ex rel. St. Louis Southwestern Railway Company* v. *Interstate Commerce Commission, et al.*, 264 U. S. 64, 78 (68 L. Ed. 565, 568) the Court said of such hearings:

> "The hearing, to be sure, is not of the ordinary kind. The railroads have no adversary. The Commission, of course, has no object except to arrive at the truth. It is not to be cross-examined for bias or otherwise as to its capacity to decide or modes of deciding what is entrusted to it; but, on the other hand, since it must grant a hearing, manifest justice requires that the railroads should know the facts that the Commission supposes to be established, . . . we think that in such way as may be found practicable the relator should be enabled to examine and meet the preliminary data upon which the conclusions are founded, and to that end should be given further information in advance of the hearing, sufficient to enable it to point out errors if any there be."

See also *Morgan* v. *United States of America, et al.*, 304 U. S. 1, 15 (82 L. Ed. 1129, 1130); *St. Joseph Stockyards Company* v. *United States*, 298 U. S. 38, 51, 73, (80 L. Ed. 1033, 1041, 1052.)

This particular portion of the record (R. 316-358) permits the concluding paragraph of intervenor-appellant's brief to be viewed in proper perspective. Transport's competitors represented by this appellant were thoroughly familiar with its operations, including Transport's use of its own bills and participation in motor rates. (As we have shown, these elements of Transport's service originally had their emphatic approval.) Before decision, these competitors were satisfied with Transport's operations, were as dissatisfied as Transport with the notice of hearing, wanted no hearing held, and joined in moving to dismiss it. Transport is not particularly critical of its competitors' presently enlightened self interest; but it does say that this background hardly warrants the assertion that the District Court's judgment unfairly establishes a new competitive motor service.

IV.
THE COMMISSION'S ORDER WOULD UNCONSTITUTIONALLY DEPRIVE TRANSPORT OF ITS PROPERTY WITHOUT JUST COMPENSATION

With respect to the confiscation issue, appellants' principal contention is that since Transport was never lawfully authorized to issue its own bills on its own rates, it cannot suffer loss by now being forbidden to do so. The record contemporary with the issuance of the certificates, standing alone and unargued, is sufficient answer to the assertion that Transport was never lawfully authorized to issue its own bills or publish its own rates and partici-

pate in motor tariffs. In addition to the authority conferred by the certificates and the duty imposed by the orders directing their issuance with respect to rates, the record shows that repeatedly, and at least as late as May of 1942, when effectiveness of motor rates on short notice was desired, the Commission granted Transport the necessary special permission. (R. 77.) More will not be added to what has been said on that score.

Appellants further complain that the trial court erred in receiving evidence on this issue, because it had not theretofore been presented to the Commission. To the contrary, in seeking rehearing on the Commission's 1948 order, Transport pointed out that it had made substantial investments in reliance on its certificates, in addition to the sums paid for those which it had purchased. (R. 420.) Necessarily the Commission was advised of the sums originally paid for the certificates the purchase of which it had authorized. Against the background of the 1944 hearing described above the Court's comment in *Baltimore & Ohio Railroad Company, et al.* v. *United States of America, et al.*, 298 U. S. 349, 370 (80 L. Ed. 1209, 1225) is particularly appropriate:

> "They could not foresee that confiscatory restitution would be required or that confiscatory divisions would be prescribed; they were not bound, in advance of the commission's findings and report, to set up a fear of transgression of their constitutional rights. Presumably the commission would keep within the law."

Appellants' citation of section 207 (b) of the Act [49 Stat. 522, 49 U.S.C. 307 (b)], providing that certificates shall not confer proprietary rights in the use of the public highways, would not seem to be in point. Proprietary rights

in public highways are not involved. What is involved here is the right conferred by certificate to carry on business as a common carrier by motor vehicle. Transport has a property right in its certificates. Their unwarranted revocation in the manner proposed would inflict on Transport a revenue loss of around a quarter of a million dollars per year which will be sufficient to convert Transport's presently profitable business to a loss operation. (R. 79-80.) Certificates of public convenience and necessity issued to motor carriers by the Interstate Commerce Commission are endowed with a proprietary interest capable of transfer. *In re Rainbo Express, Inc., Richardson* v. *National Acceptance Co. of Chicago*, 179 Fed. (2) 1, 5 (CA Seventh Circuit); certiorari denied, 94 L. Ed. 922. See also: *Seatrain Lines, Inc.* v. *United States* (D. Delaware); 64 Fed. Supp. 156, 161; *Goncz* v. *Interstate Commerce Commission, et al.* (D. Massachusetts) 48 Fed. Supp. 286, 289; *Capitol City W. P. & M. Co., Inc.*, 12 M.C.C. 79, 82. An individual's business is property. *Duplex Printing Press Company* v. *Deering, et al.*, 254 U. S. 443, 465; 65 L. Ed. 349, 356; *Truax, et al.* v. *Corrigan*, 257 U. S. 312, 327; 66 L. Ed. 254, 260. Such rights are entitled to constitutional protection. *Frost* v. *Corporation Commission of the State of Oklahoma, et al.*, 278 U. S. 515, 519; 73 L. Ed. 483, 487; *City of Owensboro* v. *Cumberland Telephone & Telegraph Company*, 230 U. S. 58, 66; 57 L. Ed. 1389, 1394.

The intervenor-appellant undertakes an analysis of the testimony on this point, in some measure perhaps on factual assumptions not too clearly apparent of record, to demonstrate that in combination, Transport and its parent railway will not sustain any loss as a result of the proposed restrictions on the certificates. The witness' testimony is unequivocal. (R. 79, 93-94.) Further cross examination might have been somewhat more in order than analysis on

brief. This appellant says in its brief (pp. 42-43) that "it is inconceivable that a shipper would refuse to tender tonnage to Railway merely because the bill of lading would bear the name of Railway rather than the name of Transport." Perhaps so—but this ignores the admitted fact that presently rail rates are generally higher than truck rates. (Admission No. 10, R. 57, 61.) Shippers might very well (and to join appellant in speculation, probably would) refuse to tender tonnage on bills of lading in Railway's name if that involved rates somewhat higher than those offered by appellant's membership. It will be recalled that Railway can participate in motor tariffs only with special permission from the Commission which at least on one earlier occasion was not too promptly forthcoming.

In the Commission's argument on this point (pp. 87-88 of its brief) there is an obvious inadvertence. The statement is made that a witness gave testimony respecting rates at the hearing before the District Court. The record reference is to a portion of counsel's argument in District Court, and the testimony actually was given on August 27, 1937 in the course of a purchase proceeding (R. 749) by a witness who was dead at the time of the District Court trial. (R. 89.) The 1937 testimony, however, makes it clear that Transport's rates were its own separately published rates.

CONCLUSION

For the purposes of this argument, Transport indulges in the presumption that the Commission does not ultimately intend capricious discrimination among various rail-controlled motor carriers, in spite of a record disclosing rather recent and currently effective grants of extensive unrestricted operating authority to other rail-owned motor carriers. (R. 85-86, 887, 892, 955, 994, 1007.)

Apparently the Commission's purpose is to establish a novel method of fixing rates. The fact that statutes impede accomplishment of its purpose does not warrant the Commission's disregard of the statutes. It has been given wide discretion in determining to whom a certificate shall issue; but when the certificate has issued, Congress has provided definite rights and duties which the certificate entails, and the circumstances and manner in which it may be revoked. The Commission cannot in the name of national transportation policy ignore other definite provisions of the same act. Transport does not undertake to question the soundness of the Commission's expert judgment. Transport simply asserts that the Commission cannot question the clearly expressed judgment of Congress. The District Court's judgment should be affirmed.

Respectfully submitted,

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APPENDIX "A"

STATUTES INVOLVED

Sec. 5 (2) (a)-(b)-(c) The Interstate Commerce Act. [Act Sept. 18, 1940 c. 722, Title I, sec. 7, 54 Stat. 905, 906; 49 U.S.C. 5(2) (a)-(b)-(c)].

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or persons seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants [and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)], and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to de-

termine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

Sec. 213, Motor Carrier Act, 1935 [Act Aug. 9, 1935, c. 498, 49 Stat. 543].

(a) It shall be lawful, under the conditions specified below, but under no other conditions, for two or more motor carriers which are not also carriers by railroad to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and/or operation of the properties theretofore in separate ownership; or for any such motor

carrier or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof.

(1) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing. If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe. *Provided, however*, That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of part

I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(2) Whenever a person which is not a motor carrier is authorized, by an order entered under subparagraph (1) of this section, to acquire control of any such carrier or of two or more such carriers, such person thereafter shall, to the extent provided by the Commission, for the purposes of section 204(a) (1), and section 220 (a) and (b), relating to accounts, records, and reports, and to the inspection of facilities and records, including the penalties applicable in the case of violations thereof, be subject to the provisions of this part.

(b) (1) It shall be unlawful for any person, except as provided in paragraph (a), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more motor carriers which are not also carriers by railroad, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this part and in violation of this paragraph. As used in this paragraph, the words "control or management" shall be construed to include the power to exercise control or management.

(2) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (b) (1) of this section. If the Commission finds after such investigation that such

person is violating the provisions of such paragraph, it shall by order require such person to take such action consistent with the provisions of this part as may be necessary, in the opinion of the Commission, to prevent further violations of such provisions.

(3) For the purpose of this section, wherever reference is made to control, it is immaterial whether such control is direct or indirect.

(c) The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(d) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraphs (a) or (b), as it may deem necessary or appropriate.

(e) Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

(f) The carriers and any person affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the "antitrust laws", as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints, and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions by

or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

Sec. 203 (a) (14) The Interstate Commerce Act [Act Aug. 9, 1935 c. 498, 49 Stat. 544; Act Sept. 18, 1940 c. 722, Title I, sec. 18, 54 Stat. 920; 49 U.S.C. 303, (a) (14)]

The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I.

Sec. 206 (a) Motor Carrier Act, 1935 [Act Aug. 9, 1935, c. 498, 49 Stat. 551.]

(a) No common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however*, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public con-

venience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

Sec. 206 The Interstate Commerce Act [Act Aug. 9, 1935, 498, 49 Stat. 551; Act Sept. 18, 1940, c. 722, Title I, sec. 0 (e), 54 Stat. 923; 49 U.S.C. 306.] (a) Except as otherise provided in this section and in section 210a, no comon carrier by motor vehicle subject to the provisions of is part shall engage in any interstate or foreign operation any public highway, or within any reservation under the clusive jurisdiction of the United States, unless there is force with respect to such carrier a certificate of public nvenience and necessity issued by the Commission auorizing such operations: *Provided, however*, That, subct to section 210, if any such carrier or predecessor in terest was in bona fide operation as a common carrier

by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not

included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

Sec. 207, The Interstate Commerce Act [Sec. 207 Motor Carrier Act, 1935; Act Aug. 9, 1935, c. 498, 49 Stat. 551, 552; 49 U.S.C. 307.] (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however*, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways.

Sec. 208, The Interstate Commerce Act. [Sec. 208 Motor Carrier Act, 1935; Act Aug. 9, 1935, c. 498, 49 Stat. 552; 49 U.S.C. 308.] (a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier

is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

(b) A common carrier by motor vehicle operating under any such certificate may occasionally deviate from the route over which, and/or the fixed termini between which, it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this part may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed.

(d) A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or to transport baggage of passengers in a separate vehicle.

Sec. 212, The Interstate Commerce Act. [Act Aug. 9, 1935, c. 498, 49 Stat. 555; Act June 29, 1938, c. 811, sec. 11, 52 Stat. 1238; Act Sept. 18, 1940, c. 722; Title I, sec. 21(c) 54 Stat. 924; 49 U.S.C. 312.] (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license

may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however*, That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204 (c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further*, That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of section 206, 209, or 211, or by virtue of the second proviso of section 206 (a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 211 (c), 217 (a), or 218 (a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(b) Except as provided in section 5, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

Sec. 216, The Interstate Commerce Act.-[Act Aug. 9, 1935, c. 498, 49 Stat. 558, 559, 560; Act June 29, 1938, c. 811, sec. 16, 52 Stat. 1240; Act Sept. 18, 1940, c. 722, Title I, sec. 22 (c) (d), 54 Stat. 924; 49 U.S.C. 316.] (a) It shall be the duty of every common carrier of passengers by motor

vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall

not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall deter-

mine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Com-

mission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule

or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

(h) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this part any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate.

(i) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

(j) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

Sec. 217, The Interstate Commerce Act. [Act Aug. 9, 1935, c. 498, 49 Stat. 560, 561; Act Sept. 18, 1940, c. 722, Title I, sec. 22 (e), 54 Stat. 924; 49 U.S.C. 317.] (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection,

tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

(b) No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in interstate or foreign commerce except such as are specified in its tariffs: *Provided*, That the provisions of sections 1 (7) and 22 of part I shall apply to common carriers by motor vehicles subject to this part.

(c) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after 30 days' notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when

such change will take effect. The Commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(d) No common carrier by motor vehicle, unless otherwise provided by this part, shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part.

Act Declaring the National Transportation Policy. [Act Sept. 18, 1940, c. 722, Title I, 54 Stat. 899; 49 U. S. C., Notes preceding secs. 1, 301 and 901.] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view of carrying out the above declaration of policy.

APPENDIX "B"

CORRECTED OPINION OF THE COURT BELOW

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Northern District of Texas,
Dallas Division

No. 3696—Civil

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPLICATION TO ENJOIN INTERSTATE COMMERCE COMMISSION'S ORDER.

I dissent, s/Ben C. Dawkins

J. T. Suggs, D. L. Case, Robert Thompson, William R. McDowell, John C. Robertson, J. L. Lancaster, Jr., W. O. Reed, Claude Williams, all of Dallas, Texas, *for the Petitioner;*

H. L. Underwood, Assistant Chief Counsel, Interstate Commerce Commission; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Washington, D. C.; Frank B. Potter, United States Attorney, Fort Worth, Texas; O. M. Harrell, Assistant United States Attorney, Dallas, Texas, *for the United States;*

E. J. Hickey, Jr., Washington, D. C.; Harmon L. Watkins, Dallas, Texas, of Counsel, Mulholland, Robie, Mc-

Ewen & Hickey, Washington, D. C., *for Railway Labor Executives Assn., Intervenor;*

Callaway & Reed, Dallas, Texas, *for Regular Common Carrier Conference of the American Trucking Associations, Inc., Intervenor.*

Before Circuit Judge Holmes and
District Judges Dawkins and Atwell

The petitioner, hereafter known as "Transport," is a corporation with its stock wholly owned by the Texas and Pacific Railway Company.

The Texas and Pacific Railway Company, hereinafter designated, "Railway," is a corporation created by virtue of an Act of Congress.

Transport is authorized to engage in the business of a common carrier by motor vehicle, or, by any means whatsoever, and partly by one means and partly by another, and by arrangement, or, contract with other common carriers. It may lease, contract with, or, otherwise deal in truck, bus, state, or, other transportation systems.

It has carried on this business for many years, subject to the provisions of the Interstate Commerce Commission Act. Such activity has been both interstate and intrastate, in the states of Texas, Louisiana, and New Mexico. Its intrastate business has been under common carriers' certificates issued by the respective states of Texas and Louisiana. It does not operate intrastate in the state of New Mexico. It has engaged in interstate business in Texas, New Mexico and Louisiana under certificates acquired by purchase and original application which were issued by the Interstate Commerce Commission, from time to time.

After the acquisition of authorization to so engage, it invested large sums of money therein. It claims that the cost of certificates authorized by the Commission, amounted to $96,674.18. That in addition to this cost, it has invested

heavily in equipment, and transportation facilities for the proper maintenance and prosecution of this business to the extent of $270,257.80. That it is earning gross revenues in interstate transportation in the approximate sum of $20,000 per month, and approximately $150,000 per month from intrastate operation.

That the purpose of its organization, in 1929, was to haul less-than-carload freight shipments, known in its petition as "merchandise traffic," to, from and between stations on the line of Railway. That its schedule of rates on such traffic between such local stations was the same as that maintained by Railway, and in that year it published station-to-station rates on said merchandise, which were served by Railway, corresponding to those of motor carriers, which rates included pick-up and delivery service. It issued bills of lading in its own name, but the transportation, except for local pick-up and delivery service was performed by Railway under arrangements between it and Transport.

In November, 1935, Transport negotiated common carrier-over-road operations between Monahans, Texas and Lovington, New Mexico.

In 1937 it secured authority from the Commission to purchase certificates of convenience and necessity from other common motor carriers, which had been established prior to the Motor Carrier Act of 1935, and commonly known as "grandfather rights."

It purchased the rights from W. A. Johnson, Johnson Motor Lines, and the Fort Worth Warehouse and Storage Company. These all related to motor carriers along the line between Dallas and Abilene and Big Spring, Texas.

In 1938 it purchased from the Southern Transportation Company common carrier and grandfather rights between Dallas and Wills Point, and Gladewater, Texas and Shreveport, Louisiana. That along the routes of these certificates are such important distribution centers, shipping points, designations and gateways as Dallas, Fort Worth, Abilene, Sweetwater and Big Spring, Texas and Shreveport, Louisi-

ana. That all of the interstate traffic handled by Transport either originates in or terminates on, or, moves over such routes. These certificates were validly issued under Sec. 206 and Sec. 213 of the Motor Carrier Act of 1935 which later became Part 2 of the Interstate Commerce Act of 1940.

That such original and purchased certificates had no such conditions attached to them by the Commission as the Commission determined in its orders of January 22, 1948, and May 2, 1949. Such orders, Transport claims, ingraft on the certificates which it owns, certain conditions which destroy, or, materially diminish the common carrier character of such rights and constitutes a taking of private property for a public purpose without just compensation contrary to the 5th Amendment.

It also claims that it had no notice of a hearing, such as is required, for such action, and, that no appropriate testimony was had by the Commission to substantiate its findings. That it will suffer irreparable damage if such orders are not restrained and that its loss will be approximately $240,000 per year, and, in addition, would deprive Transport of the value of its investments in the certificates aggregating $96,674.18, as well as of its physical property devoted to interstate transportation in the sum of $25,000. That its business in 1948 accorded it a net operating profit, before taxes, of $118,808.06, and a net profit of $69,959.41.

It denies that it has any complete remedy at law which is speedy and adequate. It asks for temporary restraint and for the impanelling of a three-judge court, and, a permanent injunction.

Attached to the petition are informative schedules, "A", "B" and "C". "A" being a report of hearings; "B" showing certificates, and "C" showing a map of Transport's and Railway's system.

The answer of the Commission concedes jurisdiction and admits the purpose of the suit. It admits the acquisition of the certificates, and that Transport has conducted opera-

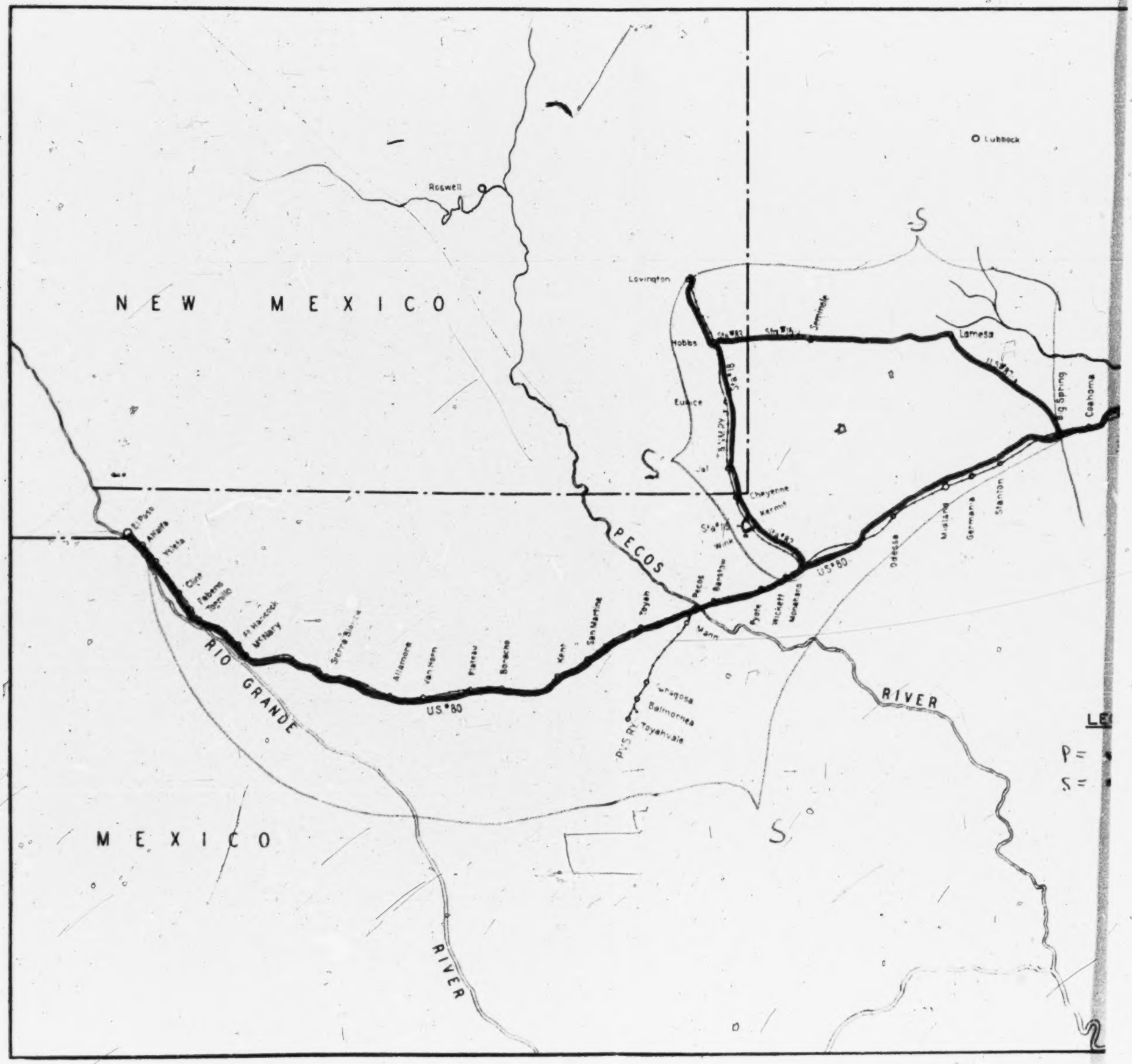
tions in interstate commerce by virtue of the same, but, it contends that the certificates contained restriction in respect "to operations or other matters." It does not answer as to operations by Transport before Motor Carrier Act. It denies that the certificates purchased granted "grandfather rights," and claims that they were limited to operations "auxiliary to, or, supplementary of, rail carrier service." It admits the orders and reports pleaded, and that they are the best evidence of its findings, conclusions and requirements. It denies that any such orders, or, requirements are arbitrary, or, the reversal of former policy with respect to the operation authority granted to Transport. It denies that such orders are unlawful. It denies that Transport will suffer irreparable damage unless its orders of January 22, 1948 and May 9th, 1949, are set aside.

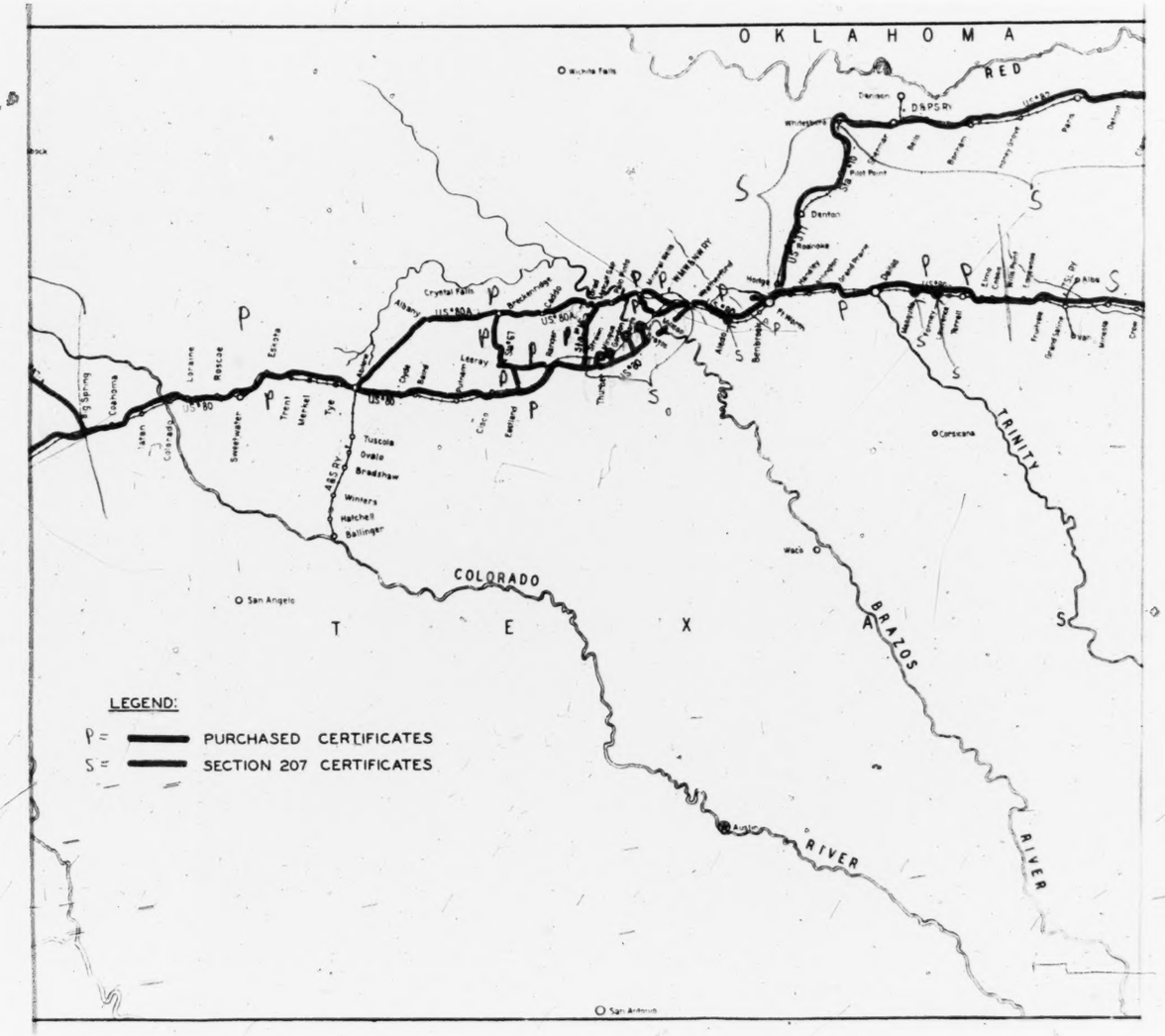
The answer, therefore, makes an issue, upon which testimony was considered appropriate, with reference to investment; carrying on the business before Motor Carrier Act; as to whether the certificates were conditioned "auxiliary to, or, supplemental of said carrier services;" damages, notice of hearing and a proper hearing.

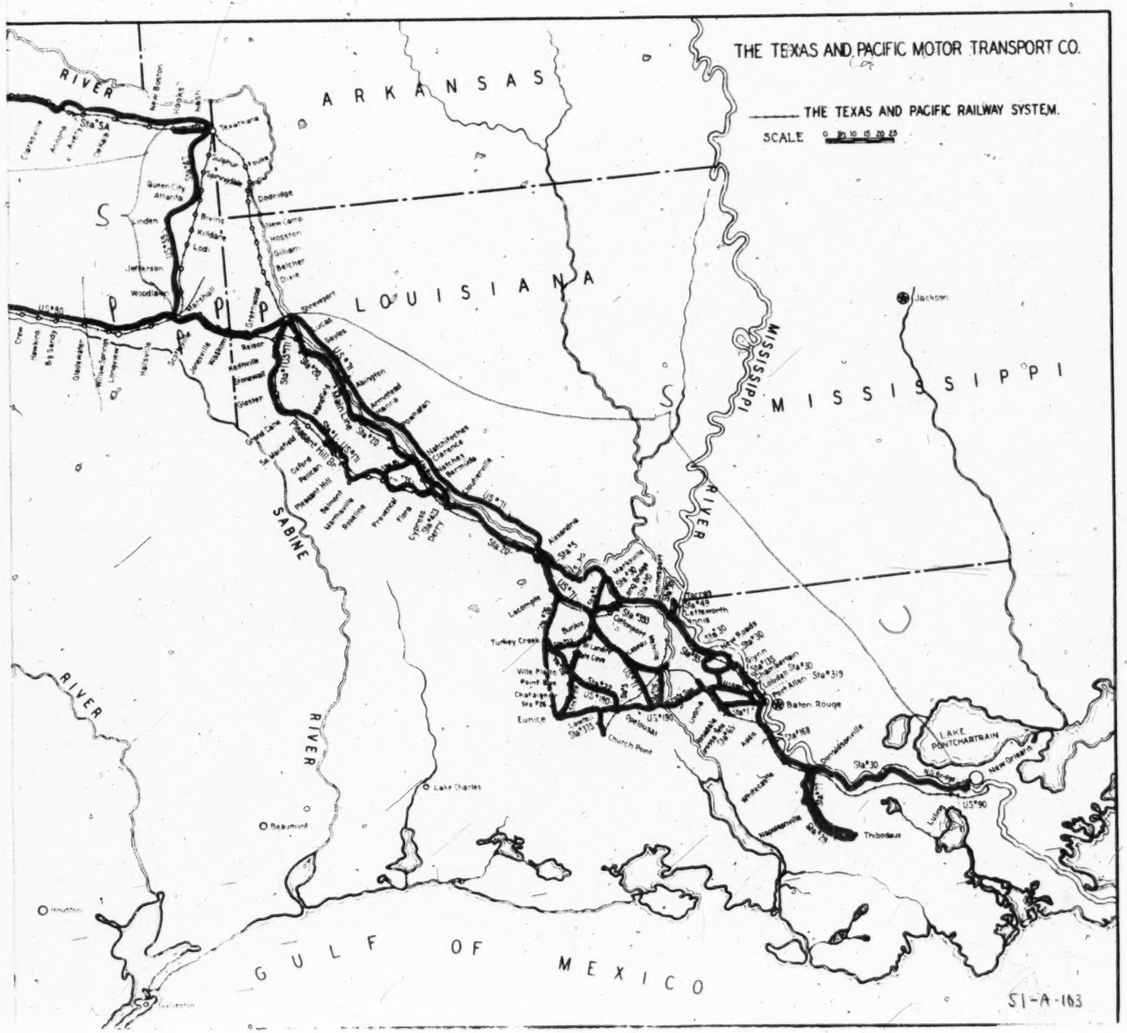
Upon these controverted issues the testimony discloses that the allegations as to the controverted issues, made in the petitioner's complaint, are entirely supported by the testimony.

As to a hearing there appear cross currents in 302 U. S. 388, spoken of a little later, and, 331 U. S. 334-336, cited by Railway, as to the inability of this court to have a hearing on this question. 331 U. S. treated only the rate, not the question of a hearing in the constitutional sense.

The defendant, in some of the exhibits, and in its own pleadings, and particularly in its report on the "further hearing by Div. 5," seems to think, and so expressed the thought that Transport's line of service, though justly and reasonably and legally authorized by both state and nation, was too long, and that it made one system. We may appropriately ask, may such a line, 1150 miles long, validly acquired from time to time, be summarily broken into parts,


NEW MEXICO
MEXICO
Roswell
Lubbock
Lovington
Hobbs
Eunice
Seminole
Lamesa
Big Spring
Coahoma
Cheyenne
Permit
Wink
Odessa
Midland
Germania
Stanton
Pecos
Barstow
Monahans
Wickett
Wyeth
Mann
Toyah
San Martine
Kent
Balmorhea
Toyahvale
Plateau
Boracho
Allamore
Van Horn
Sierra Blanca
Ft Hancock
McNary
Clint
Tabens
Tornillo
Anapra
Vinton
El Paso
US°80
PECOS
RIO GRANDE
RIVER
RIVER




THE TEXAS AND PACIFIC MOTOR TRANSPORT CO.
THE TEXAS AND PACIFIC RAILWAY SYSTEM.
SCALE
ARKANSAS
LOUISIANA
MISSISSIPPI
RIVER
SABINE
RIVER
Jackson
Baton Rouge
LAKE PONTCHARTRAIN
New Orleans
Thibodaux
Lake Charles
Beaumont
Houston
Galveston
GULF OF MEXICO
Texarkana
Atlanta
Linden
Jefferson
Marshall
Longview
Gladewater
Kilgore
Henderson
Tyler
Overton
Troup
Lindale
Mineola
Quitman
Winnsboro
Pittsburg
Gilmer
Mount Pleasant
Sulphur Springs
Commerce
Greenville
Paris
Clarksville
Hooks
Redwater
New Boston
Texarkana
Bogata
Deport
Blossom
Detroit
Bagwell
Honey Grove
Ladonia
Bonham
Savoy
Leonard
Farmersville
McKinney
Wylie
Sherman
Denison
Gainesville
Bowie
Nocona
Jacksboro
Graham
Newcastle
Olney
Archer City
Electra
Iowa Park
Wichita Falls
Burkburnett
Henrietta
Bellevue
Seymour
Benjamin
Rule
Knox City
Haskell
Stamford
Roscoe
Loraine
Colorado
Coahoma
Big Spring
Sweetwater
Trent
Merkel
Tye
Abilene
Hamlin
Anson
Crowell
Vernon
Quanah
Childress
Memphis
Clarendon
Wellington
Shamrock
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Borger
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Amarillo
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Plainview
Lubbock
Slaton
Ralls
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Matador
Paducah
Guthrie
Crowell
Chillicothe

and its independence destroyed? Does the Act justify such destruction?

The wisdom of Congress is displayed in the addition to the Motor Carrier Act which permitted such a service to be organized by and for the service of the Railroad. The main purpose of the supervision by Commission is to save the shipping public from the charge of exorbitant rates, and the nuisance of a monopolizing combination.

The rates charged and filed by Transport were in complete accord with other motor carriers. Highly satisfactory to such shippers and receivers of freight as are represented by the Chambers of Commerce in Dallas and Fort Worth as evidenced by their respective spokesmen.

This is not to say that the granting of a certificate places the holder thereof beyond the power of the Commission to supervise and to continue to inspect its service. But, it is to say that the holder of the certificate must be recognized as the holder of property and that such property may not be taken from it without due process and with an arbitrary or unreasonable motive.

The Supreme court in Railroad Commission v. Pacific Gas Co., 302 U. S. 388, treated this question at considerable length, and stated that the utility had the right to a fair and open hearing, as one of the rudiments of fair play assured to every litigant by the federal Constitution.

If rates, said the court in that case, are confiscatory, then the jurisdiction of the Commission is at once appropriately invoked. Courts do not have a right to question the correctness of the method, or, reasoning adopted by a regulating agency, but the court does have a right to determine whether, or, not the rate will result in confiscation.

The soul of the controversy here is the result that the order has. There is no debate here over the question of inappropriate charges, or, tariff rates, or, combinations, or, monopolies. The question here is *the breaking up of a system that has been validly acquired, for a legal purpose, and which will result in confiscation, and, irreparable damage to the complaining carrier.*

There are countless other decisions impinging upon the theories that are involved in this interesting controversy, such as:—

I. C. C. v. Parker, 326 U. S. 60;
U. S. v. Detroit Navigation Co., 326 U. S. 236;
New York v. United States, 331 U. S. 334;
C & O vs. U. S., 283 U. S. 35;
U. S. vs. Pierce Auto Lines, 327 U. S. 515;
I. C. C. vs. Illinois Central, 215 U. S. 452;
U. S. vs. Caroline Freight, 315 U. S. 475;
Crichton vs. U. S., 56 F. (s) 876; 323 U. S. 684;
Crescent Express Lines vs. U. S., 49 F. (s) 92;
Truax vs. Corrigan, 57 U. S. 312;
U. S. vs. Louisiana & P. R. Co., 234 U. S. 1;
In point, U. S. v. Seastrain, 329 U. S. 424, affirming 64 F. (s) 156;
Oakley C. Curtis, 4 F. (2) 979;
Boulevard Transit Lines vs. U. S., 77 F. (s) 594;
Sec. 212 (a) of the Act, 49 U. S. C.,
54 Stat. 899, Act 1940, Consolidated Lines, Railway and motor.

In I. C. C. v. Parker, 326 U. S. 60, the contest was between the Commission and motor carrier Parker, growing out of the Commission having given to Willett certain motor carrier privileges along the line of the Pennsylvania Lines in Ohio, Indiana and Illinois.

Mr. Justice Reed pointed out, for the court, the necessity for the certificates to Parker and explained that this necessity arose out of the desire "to have a common management of Railroad and trucks, for better cooperation than would be obtained by arms-length contracts, or agreements."

The evidence in that case showed there were operating truck lines which individually could serve all the waystations. He also said that, "We think that it was for a motor service to improve an existing rail service, and that the Commission had authority and administrative discretion to order the certificates to issue."

In a succeeding paragraph the Justice pointed out a necessity for closer cooperation between the rail carriers and the motor carriers. Pages 68-70.

At page 71 his reasoning goes further and at the top of page 72 it is fully harvested.

He also declares on page 73, "*There is no prohibition as to a railway acquiring truck lines in terms*, and such implication is negatived by the discretion to grant certificates conferred on the Commission by the Act."

Mr. Justice Douglas, in his dissenting opinion in which Justices Black and Rutledge joined, make this position of the court so clear that one cannot escape.

Now, the very simple academic thought arises, what, in view of the reasoning of the Supreme Court, in the case just spoken of, does "auxiliary and supplemental to," continually used by the Commission in the present case, mean? And, by what authority does the Commission read it into the certificates issued to the plaintiff?

The reasoning of the court in the Parker case shows that the very action of the Commission, under the Act, was for the purpose of being "supplemental and auxiliary," of the railroad carrier.

The facts here show that the railroad carrier owns all the stock in Transport, and, with that ownership, we must concede, engineered the ultimate securing of the complete 1150 miles covered by Transport, which, nearly all of the way, was "auxiliary to and supplemental of" the Railroad transportation. Transport's line went into New Mexico, as a feeder for the same system.

The dictionary defines "auxiliary," to mean, "helping or aiding; giving support; subsidiary or additional supplementary power. A helper or aid; a confederate; an ally as in war."

Almost as simple, is the definition of the word, "supplemental," which is, "additional; or, have the nature of or forming a supplement;" as, "he had come upon supplementary sources of income."

We, therefore, find that Transport was "auxiliary to and supplemental" of Railway. That is why Railway assisted in its creation. That is why Railway put up the money to buy the stock and to get it in working order.

That leaves two questions:—

(a) Is such action monopolizing?

If so, determination of that question was provided for by Congress. It authorized, in the general wording of the Motor Act, the consolidation, or purchase of, motor carriers to assist the railway carrier. It required the Commission to determine the question before authorizing such consolidation or purchase, and in this case the Commission did determine the question in the negative and authorized the purchases here involved.

(b) The last question is whether, after having permitted the acquisition of these certificates, the Commission may issue orders which stifle, and, in reality, destroy the value of such certificates. No one learned in the law could permit an affirmative answer to that question. It is a taking of private property without due process. It is confiscation. It is destruction.

Glancing once more at the provisions of the statute, we find that Sec. 203 (a) (14), defines common carrier by motor vehicle. The attempt by the Commission to restrict the term, "common carrier," would be an usurpation of power. So, also, there may be no lawful restriction of rates. Neither does Sec. 208(a) while broad, pemit a modification of a separate provision of the Act itself. It has been said that Sec. 206(a) means that the Commission shall preserve substantial parity between future and past operations. A valid grant cannot be affected by the addition of an invalid condition.

In truth, conditions and limitations granted under Sec. 208(a) must be reasonable, and they must be required by public convenience and necessity, or, for the purpose of

carrying out the requirements established under Sec. 204 (a) (1) and (6). Conditions must conform to the requirements of Sec. 208, itself, and must be consistent with and fall within the specific statutes applicable to common motor carriers. Thus, while the Commission might prescribe the points to be served, it could not forbid the participation in joint rates and through routes for the simple reason that such a provision would be inconsistent with the wording of Sec. 216 of the Act.

Nor can revocation be accomplished in any way except under Sec. 212. It cannot be brought about by the imposition of terms and conditions, or, limitations. The Commission, itself, said in Quaker City Bus Co. v. Black Hawk Lines, Inc., that, "The existence of a certificate creates a vested motor carrier status which stays in force and effect * * * until the certificate is revoked in accordance with the procedure prescribed in Sec. 212(a)."

If we give the Commission power to revoke by terms, limitations and conditions, by an attempted stretch of Sec. 208(a), then we make Sec. 212(a) utterly useless. Each Section has its purpose. Each Section expresses the intent of the Congress. Such intent must govern.

The permanent injunction will issue as prayed, and a judgment in accordance will be drawn and forwarded for signatures.

DONE at Dallas, Texas, this the 11th day of November, 1949.

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No. 39

In the

Supreme Court of the United States

OCTOBER TERM, 1950

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.,
APPELLANT,

v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY.

On Appeal from the United States District Court for the Northern District of Texas

---

BRIEF FOR REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.

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OPINION BELOW

The opinion of the three judge specially constituted District Court, one judge dissenting, is reported at 87 F. Sup. 107.

JURISDICTION

The judgment of the District Court was entered on December 14, 1949 (R. 183). An order by the District Court allowing this appeal was entered February 13, 1950 (R. 196). The statement of jurisdiction was sub-

mitted and considered by this Court and probable jurisdiction was noted on May 1, 1950 (R. 1033). The jurisdiction of this Court rests upon 28 U. S. C. 1252 and 2101(b).

STATEMENT

On July 14, 1949, The Texas and Pacific Motor Transport Company,[1] a wholly owned subsidiary of The Texas and Pacific Railway Company,[1] filed a complaint against The United States of America and the Interstate Commerce Commission[1] seeking to set aside and have declared as void orders issued by the Interstate Commerce Commission on January 22, 1948 and May 9, 1949, in the Commission's Docket No. MC-50544 and Sub-numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19 and 22. A temporary restraining order and a permanent injunction were sought (R. 1-21). Upon hearing, a temporary restraining order was entered (R. 193).

Thereafter Regular Common Carrier Conference of American Trucking Associations, Inc., hereinafter called Intervenor, was allowed to intervene (R. 68). A District Court of three judges was duly constituted (R. 203) and the matter was submitted on November 11, 1949. The District Court's original opinion was filed November 16, 1949 (R. 164-171); an amended opinion was filed November 5, 1949 (R. 172-180). While Judge Dawkins dissented no dissenting opin-

[1] Hereafter referred to respectively as Transport, Railway and the Commission.

ion was filed. Both the original and amended opinions found the Commission had exceeded its power and held a permanent injunction should be issued.

Findings of fact, conclusions of law and judgment for a permanent injunction were filed December 14, 1949 (R. 145-148, 180-183). Said judgment enjoined the defendants from imposing any of the conditions prescribed in the Commission's order of January 22, 1948, on any of Transport's certificates of public convenience and necessity not so restricted on issuance and from interpreting or enforcing the Commission's orders of January 22, 1948 and May 9, 1949, in such manner as would prohibit Transport from:

> [a] Filing, publishing and maintaining common carrier motor rates as provided by statute in the case of common carriers generally;
>
> [b] Interchanging traffic with other common carrier motor carriers on joint motor rates;
>
> [c] Issuing its own bills of lading and tendering its service to the public generally on its own contracts of shipment;
>
> [d] Transporting traffic to, through, from or between any so-called "key points" on that part of its route covered by interstate certificates of public convenience and necessity, to which no "key point" restriction attached on issuance of such certificates,

or in such manner as would restrict Transport to shipping on rail rates or on railroad bills of lading.

Intervenor requested two additional findings of fact (R. 162-163) which the Court refused to make (R. 160).

SPECIFICATION OF ERRORS

As a specification of the errors intended to be urged, Intervenor adopts its Assignments of Error heretofore filed (R. 197-201).

ARGUMENT

Preliminary Statement

Intervenor has an acute interest in this proceeding in that its membership consists principally of regular route common carriers of general commodities not affiliated with any railroad. According to the testimony of Transport itself, there are common carriers not affiliated with railroads rendering service to all points served by Transport at the present time, and this situation existed at the time Transport acquired its certificates (R. 90).

Reduced to its simplest terms the matter for decision is whether Transport can operate in the future exactly as an independent motor carrier or must operate as a true subsidiary of a railroad. This involves a determination of whether Transport shall hereafter be allowed to publish and maintain rates in its own name, interchange traffic with independent common carrier motor carriers on joint motor carrier rates, issue bills of lading with its own name thereon and transport individual shipment from one end of its

certificated route to another solely by motor vehicle, or shall the rates assessed by Transport be published in the name of Railway, the interchange be between Transport and independent common carrier motor carriers on joint rail-motor rates, the bills of lading be issued in the name of Railway and the transportation of specific shipments for long distance be joint rail-motor transportation.

In solving this problem there are three questions which must be answered:

1. Does the Interstate Commerce Commission have the power to limit and condition Transport's certificates of public convenience and necessity so as to insure that its operations actually will be those of a subsidiary of Railway?

2. Did the certificates originally issued to the Transport Company contain such conditions?

3. If not, was the Commission's order of January 22, 1948 a valid exercise of its power to impose conditions and limitations on certificates of public convenience and necessity?

Summary of Argument

A. The conditions or limitations placed by the Commission on Transport's certificates are reasonable and just; they will not materially affect the actual operations of the truck service. The Commission, by statute, has the power to attach reasonable terms, conditions and limitations to certificates authorized by it. Therefore, the action of the Commission was within its inherent and express powers.

B. The certificates originally issued to Transport on their face showed that unrestricted motor carrier operations were not authorized. While the minute details of the operations may not have been spelled out, these details were or should have been clear to Transport as a result of previous statements and rulings by the Commission. Transport's contention that certain of these details were not in accordance with its understanding is in part in conflict with the manner it represented its operations were or would be conducted at the time it acquired its certificates and its understanding of the conditions is not a determining factor.

C. If additional terms, conditions or limitations were added to the certficates, or if the existing terms, conditions and limitations in the certificates were modified or revised by the order of January 22, 1948, the Commission was fully authorized to take such action; the original certificates contained a valid reservation of this power. The Commission's action was based on evidence and after a full and fair hearing and therefore was a lawful exercise of its powers.

D. The present terms, conditions and limitations attached to Transport's certificates are necessary to insure that its operations are truly auxiliary to, or supplemental of Railway's train service; they do not deprive Transport of any rights to which it is lawfully entitled; their suspension by the District Court places a new common carrier motor carrier service in operation without there ever having been

any showing that public convenience and necessity requires such operations.

The Interstate Commerce Commission Has the Power to Restrict Privileges Granted by Certificates of Public Convenience and Necessity by Reasonable Terms, Conditions and Limitations.

In view of the provisions of Section 208(a) of the Interstate Commerce Act, 49 U. S. C. 308(a), it is difficult to understand how there could be any controversy on this point. It reads in part:[2]

> * * * there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require.

Seemingly Transport does not deny this power of the Commission in connection with certificates obtained through proof of convenience and necessity, but does challenge it in connection with certificates purchased by Transport on the grounds that the certificates acquired by purchase were issued on account of the vendors' "grandfather" rights. Certificates resulting from "grandfather" rights are issued under Section 206, 49 U. S. C. 306, and certificates resulting from proof of convenience and necessity are issued under Section 207, 49 U. S. C. 307, but certificates issued under either of these sections are specifically

[2] For the entire text of this Section see Appendix A, page 49.

made subject to terms of Section 208(a). Therefore, the Commission's power is the same in connection with both kinds of certificates.[3] This was recognized by inference in *Chicago, St. P., M. & O. Ry. Co. v. United States*, 322 U. S. 1, 4.

The statutory provisions relating to the transfer of certificates are found in Section 5, 49 U. S. C. 5.[4] It will be noted that Section 5 specifically provides that the Commission, in approving a purchase, shall do so "upon the terms and conditions, and with the modifications, * * * found to be just and reasonable." Thus, Section 5 reaffirms Section 208(a) in granting power to the Commission to deal with "grandfather" certificates. The Commission exercised the power given to it under the statute as will be seen by its action in connection with Docket MC-50544, Sub. 5. This involved a purchase by Transport of the operating rights of Fort Worth Warehouse & Storage Company, Inc. Among other places Fort Worth Warehouse & Storage Company had served during the grandfather period were the towns of Metcalf Gap and Albany (R. 695). These were not points served by The Texas and Pacific Railway Company, so even though the Commission approved the sale of Fort Worth Warehouse & Storage Company's operating rights to Transport the certifi-

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[3] The comparable portions of the Interstate Commerce Act dealing with contract carrier permits are not as clear as these provisions but this Court has had no difficulty in finding that the Commission has the power to treat "grandfather" and new contract operators alike. See *Noble v. United States*, 319 U. S. 88, 93, footnote 4a.

[4] These provisions were formerly in Section 213. For the full text of the pertinent provisions of Section 5, see Appendix A, pages 47 to 48.

cate of public convenience and necessity finally issued specifically provided that service could not be rendered to Metcalf Gap or Albany (R. 621). Parenthetically the record does not show that Transport has ever complained of this action on the part of the Commission.

From the above we submit there can be no doubt as to the power of the Commission to impose reasonable terms, conditions and limitations upon certificates of public convenience and necessity issued by it, regardless of whether the holder thereof acquired the same by proof of public convenience and necessity or by purchase, and regardless of whether the vendor's certificate was acquired through "grandfather" rights or by proof of public convenience and necessity.

The conditions and limitations which the Commission has placed on Transport's certificates are reasonable and just. As a matter of fact similar conditions and limitations were considered by this Court in *Interstate Commerce Commission v. Parker*, 326 U. S. 60. The decision there specifically points out that the Willett Company would transport shipments moving on the bills of lading of the Pennsylvania Railroad Company, 326 U. S. 62, and that the certificate issued the Willett Company had the so-called "key points" restriction, 326 U. S. 63. All of the restrictions were not discussed, but as shown by the Commission's decision granting the certificate, *Willett Company of Indiana, Inc., Extension-Fort Wayne-Mackinaw City*, 42 M. C. C. 721, 725, the operations there involved

were conducted in the same manner outlined in *Willett Company of Indiana, Inc.-Extension-Ill., Ind., and Ky.*, 21 M. C. C. 405, where it was stated (page 407):

> Under the proposed plan of operation, the railroad alone would deal with shippers and consignees and would assume responsibility for the freight throughout the entire movement. It would issue bills of lading, publish rates, collect all charges, adjust claims, solicit traffic, and have contacts with the shipping public. The proposed service would be optional with the railroad. The shipper would not know whether a particular shipment would move by truck and would not be authorized to specify such movement.

Obviously, therefore, the Willett Company's operations and its certificate conformed to the conditions the Commission has imposed on Transport. Yet the District Court has enjoined the Commission from requiring the Transport Company to operate in a similar manner. Patently if the conditions and limitations placed on Transport's operations were as onerous as Transport contends, the Willett Company could not perform the same type service for the Pennsylvania Railroad as Transport performs for The Texas and Pacific Railway Company. The Willett Company's operations in conjunction with its rail affiliate appear to be the rule rather than the exception. For example, *Thomson v. United States*, 321 U. S. 19, specifically stated (321 U. S. 21) that the coördinated

rail-motor freight service of the Chicago & Northwestern Railway Company was rendered on the railroad's bills of lading and under the railroad's tariffs.

An examination of the limitations and conditions reveals they are just and reasonable per se. First, there is no burden in requiring Railway to file, publish and maintain the rates to be assessed for the service in which Transport participates, for this only means that the name of Railway will be listed in the tariffs rather than the name of Transport. Such a condition does not affect the level of the rates as Railway is free to publish rates higher, lower or the same as those maintained by independent motor carriers.[5]

Second, clearly if the rates are going to be published by Railway the interchange with other common carrier motor carriers would have to be on joint rail-motor rates. In this connection note that the authority to enter into joint rail-motor rates is found in the identical part of the Act, Section 216(c), 49 U. S. C. 316(c), that authorizes joint rates between common carrier motor carriers. There is, of course, nothing in the Commission's order which prevents or restricts Railway from interchanging traffic moving on its bills of lading with independent common car-

[5] The District Court evidently labored under the misapprehension that rates by independent motor carriers are always less than by railroad. That this is not the case is demonstrated by the testimony of Witness Huffman, an official of the Transport Company, at the hearing held Oct. 17, 1944 (R. 336):

> [A] * * * The truck rates will govern, which, in practically all cases is six percent higher or more than the rail rates, especially on the four classes of commodities.
>
> [Q] That is six cents a hundred pounds?
>
> [A] Six per cent higher.

rier motor carriers. Likewise the level of the joint rail-motor rates can be the same as the level of the joint all-motor rates.

Third, it is difficult to understand how these operations could be materially affected by the name appearing on the bill of lading. Transport is a wholly owned subsidiary of Railway (R. 145) and in at least one hearing involving these certificates it was represented that so far as the public was concerned it did not matter whether the shipment arrived by box car or truck as the dealings of the public were with the same man.[6] As shipments regardless of whether the bill of lading is that of Transport or Railway are transported in the same truck or box car side by side and receive the same handling by the same employees it would seem axiomatic that the name on the bill of lading does not affect the service. In *Crescent Express Lines v. United States*, 320 U. S. 401, this Court held that the Commission could specify in a certificate the type of vehicle to be used in performing the authorized service. If this is a reasonable term, condition or limitation, it cannot be successfully urged that the specifying of whose name shall be on the bills of lading and the name of the party who must publish the rates are unreasonable terms, conditions or limitations.

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[6] See Testimony, Witness Huffman, Docket MC-50544, Sub. 1 (R. 492):

> [Q] That freight is dispensed or handled by the local agent at destination in the same manner as if it had arrived by train?
>
> [A] Yes, insofar as the public is concerned. They deal with the local agent and railroad facilities in every detail.

In our opinion the portion of the judgment of the District Court prohibiting the key points restriction from applying was based upon a misunderstanding of its effect. We believe this is clear from that part of the opinion of the Court which speaks of "the breaking-up of a system." The District Court evidently considered that the key points restriction would prevent Transport from operating a truck if it desired to do so from New Orleans, La., on the east, to El Paso, Texas, on the west. This is not the case. Even under the key points restriction Transport can operate its trucks for as long a distance as it desires; the key points restriction merely prohibits the transportation entirely by truck, of a particular shipment between two designated key points. Stated differently, a truck could leave New Orleans destined for Dallas and make the entire trip. It could not, however, take shipments originating in New Orleans and transport those shipments to Alexandria, La. It could, however, distribute such shipments to all of the various points intermediate between New Orleans and Alexandria and pick up any shipments that were destined to Alexandria or beyond. Likewise, at Alexandria the truck could pick up all shipments destined north and west thereof and distribute them in the territory between Alexandria and Shreveport. This includes shipments which originated in New Orleans and were transported to Alexandria by rail. This

procedure could be followed all along the route and the truck could proceed all the way to Dallas.

It is peculiar this restriction should be considered to be in any way unlawful for it was the principal restriction discussed in *Interstate Commerce Commission v. Parker, supra.* It, in fact, formed the basis for the dissenting opinion—not upon the ground that such a limitation was too restrictive of the rail subsidiary's operations, but upon the ground it did not sufficiently restrict the operations so as to prevent their being directly competitive with those of independent motor carriers. Further this restriction is thoroughly consonant with the past operations of Transport, for it has not been the practice of Transport to move individual shipments long distances entirely by truck.[7]

It is difficult to understand the rationale of the District Court's decision or the status of Transport's operating rights in view of the terms of the injunction

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[7] In the hearing held Oct. 17, 1944, on the consolidated cases, Witness Huffman testified on this point as follows (R. 347-348):

[Q] Would you take a shipment at New Orleans, and put it on a truck and haul it through to Pecos?

[A] No, sir.

[Q] Or to New Mexico?

[A] We have been operating a number of years, and we never have yet. We don't see any reason for it.

[Q] What is the longest haul you would give a truck shipment?

[A] About 350 miles, sir.

[Q] Between what points?

[A] At the present time, Big Spring and El Paso.

[Q] Taking points east of Pecos, what would be the longest haul?

[A] I would say normally 200 to 225 miles.

[Q] Between what points?

[A] Well, between Dallas and Big Spring—I mean Dallas and Abilene, and from Dallas to Shreveport.

issued in connection with the key points restriction. First, it will be noted the court made no attempt to enjoin enforcement of key point restrictions contained in the certificates as originally issued. The certificate issued in Docket MC-50544, Sub. 11, named El Paso and Pecos, Texas as key points and the certificate issued in Docket MC-50544, Sub. 12, named Fort Worth, Texas and Texarkana, Tex-Ark. Thus, under the terms of the injunction Transport is not relieved from observing these four cities as key points. On the other hand the Commission in its decision of January 22, 1948, eliminated Pecos, Texas as a key point and Fort Worth on traffic originating at or destined to Dallas, Texas. Consequently it appears that the injunction has enabled Transport to ignore conditions and limitations that have always been in its certificates. Be that as it may, the wording of the injunction is clear proof that even the District Court felt the Commission has the authority to place in certificates key point restrictions and that when properly placed, such key point restrictions are valid.

We, therefore, submit the Commission has the power to restrict certificates of public convenience and necessity by reasonable terms, conditions and limitations, and that the terms, conditions and limitations placed upon Transport's certificates are reasonable.

The Certificates Issued to Transport Do Not Authorize It to Render Service as an Independent Common Carrier Motor Carrier.

All of the certificates issued to Transport contained a provision reciting that such certificates were subject to such further conditions as the Commission might thereafter find necessary in order to restrict the operations to service "auxiliary to, or supplemental of, train service"; eleven of the sixteen certificates contained another condition limiting the authorized service to that which was "auxiliary to, or supplement of, train service" of the affiliated railways (R. 145).

Besides those just mentioned, each of the certificates contained one or more additional limitations or restrictions.[8] The various restrictions and provisions of these certificates were certainly ample notice to Transport that it had not received in any instance an unconditional or unlimited certificate of public convenience and necessity. The first certificate issued to Transport is dated May 31, 1939 (R. 557) and covers the operations authorized in Docket MC-50544, Sub. 1. If it were not clear to Transport exactly what authority was given to it by these various certificates, it could have and should have promptly petitioned the Commission for a clarification. It did not choose to do so, and at most contacted one Commissioner or employees of the Commission. Regardless of the

[8] A complete description of the various conditions inserted in each of the certificates is contained in Appendix B to the Commission's decision of Jan. 22, 1948, and will be found in the record at pages 38 to 40, inclusive.

personal views of these individuals, they did not have authority to bind the Commission in this matter. *Thompson v. Texas Mexican Ry. Co.*, 328 U. S. 134, 146. Even if Transport did not choose to ask for clarification it was charged with the knowledge of the meaning the Commission had assigned to these particular conditions and limitations in the past, as well as the Commission's decisions on what could or could not be lawfully done by a railroad. In this connection it is important to remember that the real party in interest at all times was The Texas and Pacific Railway Company and that Transport was utilized as an instrument of the Railway more or less by accident and purely in the interest of expediency.[9] To this extent the practice followed by The Texas and Pacific Railway Company differed somewhat from the procedure of other railroad companies in obtaining motor carrier certificates. For instance the certificates involved in *American Trucking Associations, Inc. v. United States*, 326 U. S. 77, were issued directly to Seaboard Airline Railway Company rather than to a subsidiary. As Transport is a wholly owned subsidiary of Railway, we do not believe anyone will contend Transport obtained any greater rights under

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[9] In Dockets MC-F-107 and MC-F-108, Witness Huffman specifically testified on this point as follows (R. 663):

> [Q] (By Mr. Lancaster) When it was concluded to enter into truck operations, the transport company being already formed and organized, was the company which went into that, rather than organizing another subsidiary or creating a department of the railroad company to engage in those truck operations?
>
> [A] Yes, sir; we decided to use the machinery of the T. & P. Motor Transport. It was well advertised and had been in that game for a number of years.

the certificates issued to it than Railway would have obtained if the certificates had been issued to Railway.

Prior to the issuance of any of these certificates, and in fact even prior to the regulation of motor transportation by Congress, the Commission had occasion to deal with attempts by railroads to compete with independent motor carriers using subsidiaries or agencies over which the railroads exercised domination but which were actually corporate entities. For instance in *Atchison Chamber of Commerce v. Union Pacific Railroad Company*, 196 I. C. C. 149, the Commission had before it a situation where the Union Pacific Railroad Company had instituted what was referred to as "coördinated truck-rail freight service" (page 149) with a subsidiary corporation, Union Pacific Stages, Incorporated. The stage company published rates on certain traffic lower than the rail rates on the same traffic.

Immediately there were complaints by shippers using rail transportation and the sole defense urged by the Union Pacific Railroad Company was its contention that (pp. 152-153):

> * * * the rates assailed are published and the service in connection therewith performed in the name of the stage company, 'a separate legal entity with authority to make contracts, to control its own affairs, and to carry on its own business'; and that in failing to name the stage company as a party defendant the complaint is defective. Because of this they urge that the complaint should

> be dismissed unless we can hold [which defendants deny] that the relationship existing between the stage company and defendants is such as to require a treatment of the former for the purpose of this proceeding as but an *alter ego* of the latter.

Relying upon the decision of this Court in *United States v. Reading Co.*, 253 U. S. 26, the Commission held (196 I. C. C. 154, 155):

> The contention that defendants may employ independent contractors to provide service and facilities which it is defendants' duty to provide, and that it is a matter of indifference to the public what agencies and instrumentalities are employed for that purpose so long as the public duty is adequately performed, does not meet the situation. Defendants cannot through independent contractors provide common-carrier services and facilities, and charge less therefor than the tariffs provide for, were such services performed and such facilities furnished by the defendants themselves (p. 154).
>
> * * * * *
>
> * * * That which is here condemned is the making of charges for the haul from station to station, or charges for such haul plus pick-up or delivery charges less than the regular published tariff charges for the haul from station to station, which practice we find to result in undue prejudice or unjust discrimination against interstate commerce (p. 155).

A short time later the Commission in *Express Merchandise from Cincinnati, Ohio to South*, 210 I. C. C.

89, had to consider a situation where the rates were published by Southeastern Express Company but Southern Railway rendered the service. In disapproving the rates the Commission stated:

> It seems clear, without reviewing the historical background on which the use of express companies as instrumentalities for the performance of certain common-carrier rail services is founded and accorded recognition in the act, that the transportation service for which it is proposed to apply the suspended rates would not be either express service or transportation service rendered by respondent, but would be in fact freight service rendered by the Southern Railway system for which, under the act, the latter is obliged to file and publish in its own name the rates to be charged therefore. * * * The Southern Railway system cannot lawfully render such service for respondent, except at rates and charges filed and published by it in accordance with the provisions of section 6 of the act. Nor can it lawfully relieve itself, by contract or arrangement with respondent, of its obligations under that section to file and publish the rates and charges applicable for transportation services rendered by it, and, under sections 1, 2, 3, and 4 of the act, to establish rates and charges which are reasonable, nondiscriminatory, and nonprejudicial. Respondent cannot lawfully assume these statutory obligations of the Southern Railway System (pp. 93-94).

Note particularly that in these two proceedings the Commission had no difficulty in finding the service

being performed was actually that of the railroads and that the duty was on the railroads to file and publish in their own names the rates to be charged for the service. If a railroad could publish one set of rates in its own name and another set in the name of a subsidiary the possibilities at least are legion that discrimination of the worst type against shippers would exist.

After the enactment of the Motor Carrier Act of 1935, 49 Stat. L. 543, U. S. Code, Title 49, Chapter 8, the first reported decision of the Commission dealing with truck operations by a railroad was *Pennsylvania Truck Lines, Inc.-Control-Barker*, 1 M. C. C. 101. In that opinion we find our first reference to such terms as "auxiliary" and "supplemental." The application there was filed by a subsidiary of the Pennsylvania Railroad Company, but all the routes sought to be acquired did not parallel the lines of the railroad. After discussing the operations parallel to the railroad, the Commission pointed out:

> The railroad does not, however, so far as the routes in question are concerned, propose to confine itself to motor-vehicle service auxiliary to its rail operations. It contemplates also the furnishing of motor-carrier service which would not be associated in this way with rail operations, pointing out that with its financial and other resources it would be able to expand and improve very materially the service which the partnership has been furnishing. As evidence that this would not 'unduly restrain,' competition it fur-

ther points, as we have seen, to the large number of competing motor carriers now operating in the same territory.

While we have no doubt that the railroad could, with the resources at its command, expand and improve the partnership service and that, so far as numbers are concerned, there is now an ample supply of independent operators in the territory for the furnishing of competitive service, we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. The language of section 213, above quoted, is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. Improvement in the particular service now furnished by the partnership might flow from control by the railroad, but the question involved is broader than that and concerns the future of truck service generally. The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public (1 M. C. C. 111-112).

* * * * *

We are unable to find, therefore, that the employment by the railroad of the properties and

> rights of the partnership to provide over-highway truck service as proposed herein in competition with rail and motor carriers generally, including the railroad, will 'promote the public interest' by enabling the railroad to 'use service by motor vehicle to public advantage in its operations and will not unduly restrain competition (1 M. C. C. 112).

After meeting some of the Commission's objections to the transaction, the applicant again brought this matter before the Commission with the results shown in the decision in *Pennslyvania Truck Lines, Inc.-Control-Barker M. Frt.*, 5 M. C. C. 9. Parenthetically this decision was rendered approximately two years before the first certificate was issued to Transport. In its second decision the Commission amplified its thoughts about the scope of the operations of a rail-motor subsidiary thus:

> The scope of the operations proposed to be retained is broader than intended by the conditions we stated in our prior report. Hence, it will be of advantage to the parties in this and later proceedings if we here amplify the meaning of those conditions. Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier.

> Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station' service (5 M. C. C. 11-12).

With this specific language before it and even disregarding the two cases decided prior to the regulation of motor carriers, it is difficult to understand how Transport could reason it would be able to operate under its certificates as a competitor to Railway and independent motor carriers. On the other hand it is patent that if Transport chose to publish rates different from Railway, render all truck service between points served by Railway, interchange traffic with other motor carriers rather than with Railway and dealt generally with the public by issuing its own contracts of shipment, etc., that such service would be in direct competition not only with Railway but with all motor carriers serving the same points. We submit the Commission in the last cited case gave a simple rule whereby Transport could determine if the operations it desired to conduct or was conducting were approved or disapproved operations. While there might be grounds for Transport not being clear on all points it is inconceivable that anyone would construe certificates plainly showing they only authorized service auxiliary to, or supplemental of, rail service as granting rights to perform unrelated independent service.

In our opinion it is clear that when its certificates were issued; Transport was either satisfied with operations subject to conditions or it did not want to discontinue the operations it was conducting in contravention of those restrictions. We believe Transport took no action seeking clarification or changes because it was satisfied to operate under those conditions. This belief is confirmed by the first application filed by Transport to secure a certificate of public convenience and necessity. In that application Transport's president swore to the statement (R. 442) "Texas-New Mexico Railway Company operates between all points on applicant's route. Applicant's service is supplemental to and not competitive with its service."[10]

Further in the hearing held in Docket MC-50544, Sub. 1, on June 24, 1937, Witness Huffman, General Merchandise Traffic Agent of Railway and General Freight Agent of Transport, expressly stated the service of Transport was a substitute for cars ordinarily handled by local freight trains for short dis-

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[10] Other statements of similar purport in this application are (R. 467):

> The schedules are predicated on the arrival and departure times of Texas and Pacific Railway Company trains, eastbound and west-bound, from Monahans, Texas, with which applicant's truck service is co-ordinated. When trains are late, trucks are held a reasonable length of time at Monahans.
>
> * * * * *
>
> The most economical and expeditious handling of such traffic is the transportation service now afforded by applicant in conjunction with The Texas and Pacific Railway Company and its connections.

tances only and that the Transport Company did not contemplate entering into any joint arrangement with any other motor carrier[11] (R. 490, 507). This substituted service in connection with the railroad was denominated as "auxiliary" service.

Transport made no distinction between the operations conducted under "grandfather" certificates pur-

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[11] [Q] (By Mr. Lancaster) Mr. Huffman, will you please outline in general the present mode of conducting motor carrier operations over the routes here involved, as applied to intrastate traffic at the present time, and as proposed to be applied to interstate traffic?

[A] This truck service is an auxiliary service to all railroads. We load cars at the distributing points, for example, New Orleans, Louisiana, that car is taken in over night train to Addis, reaching there about midnight, and there the tonnage radiates out to the very small stations, reaching them 7 o'clock or for early morning delivery.

[Q] From Addis it is picked up and run out by truck to small main line points, as well as branch line points?

[A] Yes, sir.

[Q] Is it substantially accurate to say you furnish a service which otherwise could be furnished by local freight trains handling way cars, they are called, I think, of less than carload freight?

[A] That is correct, and it is a universal way of handling merchandise by railroad, by local train. The local train operates a distance generally of about a hundred miles, peddling out the merchandise as it goes through the small towns [R. 490.]

[Q] (By Exam. Peyser) Does the transport company contemplate entering any joint arrangement with any other motor carriers as to handling traffic?

[A] Well, if the general public demands—if there is a public demand for it we will or would.

[Q] Do you consider there is such a demand at the present time?

[A] No, sir.

[Q] And the primary purpose of the transport company is to offer this supplementary service for the railway?

[A] Yes, sir.

[Q] And not as a carrier generally by motor vehicle?

[A] That is right. It is auxiliary service.

MR. LANCASTER: Although, as you said, there may be some instances where there would be an all-truck haul for relatively short distances?

THE WITNESS: That is right. There would be very few of them though [R. 507].

chased from others and certificates received by it through proof of public convenience and necessity.[12]

While its certificates were being acquired, Transport pointed out that its rates were identical with the rail rates (R. 749). All along the officials of Transport recognized its subservience to Railway. For instance, in one of the early hearings relating to a purchased certificate, an objection was made to any testimony about benefits rebounding to Railway from the operations of Transport. Counsel for Transport resisted this objection thus (R. 752):

> If I may say so, under Section 213, under the proviso under which this application falls, there are only two issues, and one issue as applied to this case is whether the transaction will promote the public interest by enabling such carrier to use service by motor vehicle to public advantage in its operation. That is the operation of the railroad.

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[12] Witness Huffman at the hearing held August 27, 1937, on the application to purchase the operating rights of Southern Transportation Company testified as follows:

> CHAIRMAN TERRELL: Now, then, you propose to haul freight delivered to you by the Texas & Pacific Railway Company?
>
> THE WITNESS: Yes, sir.
>
> CHAIRMAN TERRELL: Do you propose to haul freight delivered to you by other connecting companies, I mean truck lines?
>
> THE WITNESS: No, sir.
>
> CHAIRMAN TERRELL: You won't receive any from other truck lines?
>
> THE WITNESS: No, sir, we won't receive any unless there is a demand and necessity for it. There will be other truck lines—there will be other competitors in there.
>
> [Q] (By Mr. Lancaster) Mr. Huffman, if the applicant institutes the truck operation that he proposes to under this application, and under the other application filed, if as

(Footnote 12 continued on next page.)

In other words, counsel for the applicant recognized that it was Railway which would obtain the benefits of the motor carrier rights and that was Railway not the public that would use the motor carrier operations. Obviously, this is a recognition Transport must be operated as a part of Railway rather than separate and apart from it. In this connection the terms of the various certificates require the motor service to be auxiliary or supplementary to the *train service* rather

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(Footnote 12 continued.)

to its truck operations it is required to interchange by any competent authority it will do so?

[A] Yes, sir.

CHAIRMAN TERRELL: Then your testimony is not like you first stated?

THE WITNESS: Yes, my testimony was to this effect. That at the present time we do not anticipate to interchange with other truck lines, but if the authorities demanded that we do so we will interchange with other companies.

MR. LANCASTER: Our position is this, just in so far as we are engaged in truck operations we are willing to establish any interchanges that the public needs or convenience may call for. As of the present time we are not prepared and we don't think it will be in the public interest for us to interchange freight between our rail operations and other truck lines because that would involve an invasion of the territory of other established carriers, and at the present time I don't think that that is the desirable thing and it is my understanding that regular authorities in general are of the same opinion (R. 742).

* * * * *

[Q] (By Mr. Sayers) Now, Mr. Huffman, at the present time your principal service to those smaller towns is peddlar car service, is it not?

[A] That is correct.

[Q] Do you propose to do anything else to supplement or rather to take the place of peddlar car service by truck lines?

[A] That is the principal purpose of it.

[Q] That is exactly what I am trying to get to. What, besides taking the place of that peddlar car service, does that truck line service propose to do?

[A] I can't think of anything else right this minute, probably we might handle Express or United States mail, but at this particular time I cannot think of anything else [R. 745].

than to the over-all operations of Railway.[13] The only reasonable construction of such a condition is that the rail service of the parent company is to be improved rather than the parent company being authorized to engage in a separate and distinct form of transportation.

Therefore, it is plain the terms, conditions and limitations of the certificates now pin-pointed for discussion were actually in accordance with Transport's operations at the time the certificates were issued and the particular limitations imposed are necessary to insure the service rendered will only be auxiliary to or supplemental of the rail service. It is immaterial that Transport may have intended to or actually did apply for some authority not granted by the Commission for the Commission in the exercise of its powers is not bound by the applicant's statement of the rights sought. *Chicago, St. P., M. & O. Ry. Co. v. United States*, 322 U. S. 1, 4.

We have already adverted to the fact that in *Interstate Commerce Commission v. Parker*, 326 U. S. 60, this Court dealt with a situation where it was specifically shown the motor carrier service was auxiliary to and supplemental of the rail service when

[13] For instance, one of the restrictions contained in the Certificate of Public Convenience and Necessity issued in Docket MC-50544, Sub. 8, was [R. 776]:

> The authority herein granted shall be subject to further limitations, restrictions, or modifications as may be found necessary to impose or make in order to insure that service shall be auxiliary to or supplementary to train service of said railway and shall not unduly restrain competition.

the railroad itself published the rates and issued the bills of lading. In this same proceeding it was stated that the key points restriction was one way to insure that the motor operations were truly supplementary or auxiliary to the rail service.[14]

There is one other matter that deserves mention in this section of the brief. Here are dealing with the construction or interpretation of an administrative regulation. We do not believe there is any substantial doubt as to the meaning of the words used in the various certificates, but if there is, the construction placed upon such words by the Commission itself is entitled to great weight. Or as said in *Bowles v. Seminole Rock & Sand Co.*, 325 U. S. 410, 414.

> Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.

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[14] While the routes paralleled the lines of the Pennsylvania in northern Indiana and the southern peninsula of Michigan, the authorization to Willett forbade the transportation by applicant as a common carrier of any shipments from Fort Wayne, Indiana, to Grand Rapids, Michigan, or through or to or from more than one of said points. The purpose of this limitation was to restrict Willett to transportation truly supplemental or auxiliary to the rail traffic [326 U. S. 63].

The construction placed by the Commission upon the phraseology of the conditions in the certificates is not inconsistent with those conditions and it is certainly not plainly erroneous. Under these circumstances we submit it should be held that the certificates as issued contained terms, limitations and conditions which preclude Transport from engaging in the practices authorized under the injunction issued by the District Court.

Any Additional Terms, Conditions, or Limitations Not Found in the Original Certificates but Imposed by the Commission's Order of January 22, 1948, Are Valid and Enforceable.

Assuming, arguendo, the limitations and conditions held to be void and unenforceable by the District Court were not fully within the terms and provisions of the original certificates the Commission had authority to impose such conditions and limitations by its order of January 22, 1948. The District Court evidently proceeded on the assumption that once a certificate is issued it is sacrosanct and can not be changed or limited in any manner or degree. Such an assumption fails to recognize the authority or power of the Commission under the facts of this case. We need not concern ourselves here with the power of or the action that must be taken by the Commission to revoke or terminate a certificate in whole or in part for that is not involved. We have already demonstrated that conditions and limitations requiring

rates covering the service to be published in the name of Railway, the bills of lading to be those of Railway and prohibiting the transportation of particular shipments between specified key points do not revoke or terminate Transport's certificates in whole or in part. Transport can still move in its vehicles the same kinds and types of traffic it hauled at any time during its existence; it can operate its trucks over the same highways heretofore used, between the identical points heretofore served; and rates can be established on any level that it is desired to charge.[15] As a matter of fact Transport's witness herein conceded on cross-examination that the only restriction that would make any change in the physical handling of the shipments heretofore handled by it would be so-called key points restriction (R. 92). Other testimony already discussed reveals that any change in the physical handling brought about by the key points restriction would be minor and previous decisions of this Court disclose that key point restrictions are necessary to insure that service such as is rendered by Transport will be truly auxiliary or supplemental to train service. If the privileges conferred by Transport's certificates are actually any different as a result of the Commission's order of January 22, 1948, it is only because the conditions and limitations have been slightly revised or modified; there has been no change in the basic authority covered by the certificates.

[15] Rates must of course be reasonable and non-discriminatory but these limitations apply to both rail and motor rates.

We have heretofore pointed out that such conditions and limitations are within themselves reasonable and this being true any modifications made by the order of January 22, 1948 falls squarely with the terms of Section 208 where it is provided:

> "* * * there shall, at the time of issuance and *from time to time thereafter*, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may *from time to time* require [Emphasis supplied].

The only possible construction of the above language is that the Congress intended the Commission to have the power, in some circumstances, even after a certificate was issued to attach to or engraft upon such certificate additional or modified conditions and limitations. It is unnecessary in the decision of this case to determine the maximum extent of this power but it certainly extends to situations where, as here, jurisdiction was retained to impose additional or modified conditions. This is particularly so as the conditions and limitations specified were found to be required in the public interest. Thus, regardless of whether the certificates as originally issued allowed Transport to place its own name on a bill of lading, it is clear the Commission could subsequently attach a condition to these certificates prohibiting such a practice.

We reiterate that this power extends to certificates obtained either by virtue of "grandfather" rights or

by proof of public convenience, because Section 208 is made applicable to certificates issued under Sections 206 and 207, the only two sections authorizing the issuance of certificates. The fact that some of Transport's certificates were acquired by purchase does not nullify the Commissions' power in this respect. On the contrary the Commission is given additional power in connection with purchased certificates by Section 5(9), 49 U. S. C. 5(9), where it is provided:

> The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraphs (1), (2), or (7), as it may deem necessary or appropriate.

Thus even today the Commission could undoubtedly supplement its orders in those proceedings dealing with Transport's purchase of certificates of public convenience and necessity.

This Court had occasion to comment on the power and authority of the Commission to revise the conditions of certificates when the right to do so was reserved and recognized it as valid in *Interstate Commerce Commission v. Parker, supra,*

> * * * If the Commission later determines that the balance of public convenience and necessity shifts through competition or otherwise, so that injury to the public from impairment of the inherent advantages of motor transportation exceeds the advantage to the public of efficient rail transportation, the Commission may correct the tendency by restoration of the rail movement requirement or otherwise [326 U. S. 71-72].

The Commission did not relinquish any authority over Transport's certificates granted it by statute, but instead specifically reserved its authority by stating on the face of each certificate the following or substantially the following (R. 38-40):

> The authority herein granted shall be subject to such further limitations or restrictions as the Commission may hereafter find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, train service of the railway, and in order to insure that the service shall not unduly restrain competition.[16]

Further, in every certificate there was additional language of which that contained in the certificate issued in the original Docket MC-50544 is typical. This certificate provided that the authority to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle was:

> * * * subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to said carrier [R. 546].

Thus there can be no doubt that authority was retained by the Commission to add to these certificates

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[16] Evidently the reservation in the *Parker Case* was substantially the same, for there it was said:

> As a further assurance that Willett might not inadvertently have received privileges beyond the Commission's intention to grant, a right was reserved by the Commission to impose such further specific conditions as it might find necessary in the future to restrict Willett's operation 'to service which is auxiliary to, or supplemental of, the rail service' [326 U. S. 63].

terms, conditions and limitations or modify their original conditions and limitations as the exigencies of the circumstances warranted.

In this connection the position taken by Transport in this case is certainly inconsistent with the position heretofore taken before the Commission. Specifically it now contends no modifications or revisions can be made in the conditions and limitations of the certificates, but as late as May 20, 1943, it was urging the Commission that a provision requiring the service of Transport to be auxiliary to or supplemental of rail service coupled with the retention of the right to make future changes were all that were necessary in order to see that the Transport Company's operations were properly conducted.[17]

In passing, it might be mentioned that even if the changes the Commission provided in its order of January 22, 1948, amounted to a revocation in whole or in part of the certificates, there is certainly a predicate for this action under the terms of Section 212 of the Interstate Commerce Act, 49 U. S. C. 312.[18] This sec-

[17] The petition filed by the Transport Company May 20, 1943, read in part as follows [R. 286]:

> The retention of Condition No. 1, that the service to be rendered by the transport company shall be limited to that which is auxiliary to or supplemental of rail service of the railway, together with the machinery for imposition of additional conditions provided by Condition No. 5, will be quite sufficient for all purposes here, for it is quite obvious that it would prevent the transport company from rendering a service wholly separate and distinct from that of the railway. For instance, the transport company would violate Condition No. 1 if it attempted to render an all-truck service without regard to the contemporaneous service by merchandise car.

[18] For the text of Section 212, see Appendix A, pages 49 to 50.

tion provides that any certificate may upon application of the holder be amended or revoked in whole or in part. In the petition of May 20, 1943, the Transport Company definitely sought modification of all of its Section 207 certificates, urging that the modifications it sought could be accomplished on the records already before the Commission (R. 278). It went further and urged that if the Commission did not feel that such changes could be made upon the then existing records, that a further hearing be held for the purpose of making such changes as were necessary in order to allow Transport to continue to operate in coördinated service with Railway. The petition specifically urged the Commission to give Transport an opportunity at a further hearing to prove that what it desired to do could be done either under the method advanced by it or "some substitute method" (R. 302).[19]

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[19] The petition read in part as follows:

> We have high hopes that after study of the foregoing portions of our petition the Commission will concur in our view that Condition No. 3 should be eliminated, that the relevant rules of Tariff Circular No. 20 should be modified, that the necessary special permission should be granted as prayed, and that the finding of the Division in respect to Condition No. 1 should be rejected, but we earnestly pray that if by some ill chance the Commission should not concur in that view, it will grant us a further hearing, at which we are confident we can demonstrate beyond peradventure that, by the methods herein before outlined or by some substitute method, the coördinated service which the transport company and the railway are today furnishing in collaboration with the independent motor carriers is and for the future will be required by public convenience and necessity. Thus far the hearings have been held at intervals over a considerable period of years without benefit of any commitment by the Commission on the measure of authority which it felt had been granted or taken away by the imposition of the

(Footnote 19 continued on next page.)

In spite of some intimations to the contrary, the facts are that the portion of this petition seeking a further hearing was granted (R. 307) by an order reading in part:

> It is ordered, that the said proceedings be, and they are hereby reopened for further hearing at a time and place to be hereafter fixed, solely to determine what, if any, changes or modifications should be made in the conditions contained in the outstanding certificates of public convenience and necessity issued to The Texas and Pacific Motor Transport Company.

It is true Transport subsequently sought in vain to have this hearing cancelled (R. 309-311) because the Commission had allowed Railway to become a party to the independent motor carrier tariffs. This action did not affect the validity of the proceedings for surely it will not be urged that Transport has the power to invest and divest the Commission of jurisdiction as Transport sees fit. This is particularly so as Section 212 empowers the Commission on its own initiative, after notice and hearing to suspend, change or revoke certificates. In this connection the above quoted order related only to the Section 207 certifi-

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(Footnote 19 continued.)

conditions attached to the grants of authority; now for the first time we are appraised of the circumstances which the Division believes to be determinative. Knowing now how the Division regard the coördinated service and knowing too what it considers the obstacles to participation by the transport company [and the railway too if this petition should be denied], we submit that we could place the facts before the Commission on a consolidated record in such fashion as to impress upon it the value of the present service in interchange at joint rates and the real need for its continuance unmolested [R. 302-303].

cates, but the order setting the hearing was expanded by the Commission on its own motion to include the purchased certificates (R. 313-315). Transport was well represented at this hearing but has sought to minimize it by urging (a) Transport had no proper notice of the issues, (b) the Examiner conducting it could not or would not advise Transport of the exact issues, and, (c) Transport did not place any testimony in the record voluntarily. There are several fallacies within these various positions. In the first place the notice clearly states that the matter to be considered was possible changes or modifications in the certificates of Transport. Of course the Commission did not set out in the notice exactly what modifications or additions it intended to make. We suspect that among other reasons for not doing so the Commission had no preconceived opinion on what changes, if any, were needed and was depending upon a reconsideration of the records therefore made and the record at the reopened hearing to determine its course of future action.

Second, anything the Examiner said or failed to say at the hearing is immaterial for as heretofore pointed out no employee of the Commission has authority to bind the Commission. We want to emphasize here that Transport's case seems to be predicated entirely upon what its officials thought of the certificates granted to it or what some one individual connected with the Commission did or said in connection with those certificates. Transport cannot show a single

instance where the Commission has mislead it in any respect. The record is clear that every time Transport presented its problem to the Commission, the Commission consistently held that the privileges granted by the certificates were identical with those outlined in its order of January 22, 1948.

Third, the record in the October 17, 1944 hearing contained additional information about the current operations of Transport and this information coupled with that in the previous records certainly afforded the Commission substantial testimony on which to base its order which is now challenged.[20] Even if no additional information had been elicited at this further hearing this would not vitiate the Commission's order. Patently, Transport cannot nullify the Commission's powers by refusing or failing to attend a hearing or to submit evidence. The absence of merit in Transport's contentions about lack of notice etc. is readily disclosed by contrasting the facts here with those in *Crescent Express Lines v. United States*, 320 U. S. 401 where a similar attack on an order of the Commission was disallowed.

We submit therefore that if any additional conditions or limitations were imposed by the order of January 22, 1948, or if any modification or revision of existing conditions or limitations were made, such

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[20] In the interest of brevity we will not again discuss this record but as an illustration will reiterate, in view of the objection to the key points restriction that in this hearing the Transport Company specifically testified that it did not transport shipments by truck for any extended distance [R. 347-348].

action was within the power of the Commission. As there was substantial evidence to support the Commission's action, its order was valid and should not have been set aside.

The Damages Allegedly Flowing From the Commission's Order Are Greatly Exaggerated.

The District Court, under a misapprehension of the meaning of the testimony, found (a) Transport's interstate certificates have an aggregate market value of $65,000.00 which would be destroyed, and (b) Transport would lose some $240,000.00 per annum of revenue by giving effect to the Commission's order (R. 147). These facts were given considerable weight in the conclusions of law which resulted in the granting of the injunction. Manifestly the certificates could have a market value only to the extent they confer the right to operate over the highways designated in these certificates. Stated differently, the Transport Company must have a right, and in fact a property right to use these highways capable of being sold before these certificates could be sold for any such sum of money. Even if we concede that someone would be willing to pay this sum for this property right to operate over the highways, this fact cannot be considered in this case because of the express provisions of Section 207(b), 49 U. S. C. 307(b) that "No certificate issued under this part shall confer any proprietary or property rights in the use of the public

highways." Therefore, the District Court erred as a matter of law in giving any weight to this evidence.

While Transport's witness testified that Transport's revenue from interstate shipments handled under its bills of lading was in excess of $240,000.00 per annum (R. 79) this does not mean that this amount of revenue would be lost to the combined operations, Railway and Transport. The records in the proceedings before the Commission in evidence here disclose that of the Transport Company's total traffic only about 20 per cent moves wholly by truck (R. 339). Manifestly the percentage of intrastate traffic moved entirely by truck is greater than the percentage of interstate traffic so moved for according to Transport's evidence it is only the short haul traffic that receives all truck service. With the exception of traffic moving between certain border points it is apparent that the short hauls will occur on intrastate rather than on interstate traffic. Thus, the maximum amount that could be lost would be approximately 20 per cent of this $240,000.00. We doubt, however, that any of it would be lost to Transport *and* Railway. Of course if Transport no longer issues bills of lading, there will be no revenue earned on its bills, but this will not prevent the same identical traffic from being transported in Transport's trucks. The same service will be available in the future as it has been in the past and it is inconceivable that a shipper would refuse to tender tonnage to Railway merely because the bill of lading would bear the name of Railway rather

than the name of Transport. This is particularly so as it is not shown the shipper knows when he tenders tonnage to either Railway or Transport whether the shipment will be moved from origin to destination completely by a motor vehicle or a box car, or partially by a motor vehicle and partially by a box car. Revenue paid directly to Railway instead of being paid indirectly through Transport is certainly not revenue lost by the real party in interest—Railway.

The record shows that whether Transport operates at a profit or not is wholly determined by its inter-corporate transactions with Railway (R. 91). The contract between Railway and its subsidiary requires any profit made by Transport or a substantial portion of it to be paid over to Railway. This is as it should be for the operations are actually those of Railway, but insofar as the question of profit is concerned, a rearrangement of the contract at any time could either make Transport show a profit or a loss at the whim of Railway. Under these circumstances the District Court should not have allowed the exaggerated statements concerning losses and profits to in any way have influenced its judgment for they caused it to err as a matter of law.

CONCLUSION

The effect of the lower Court's decision upon the independent motor carriers with whom Transport desires to compete is aptly illustrated by the Commis-

sion's decision dated January 21, 1943, where it was said (R. 264-265):

> The certificates granted petitioner were predicated upon a showing that public convenience and necessity require operation by it for the purpose of bringing about an improvement in the rail service of the Railway in the movement of less-than-carload merchandise traffic to and from small way-stations which were without through-train service. This improvement was to be accomplished through the use of trucks, instead of cars moving in way-freight trains, as a substitution of a more efficient for a less efficient *means* of service. The traffic is so-called package or merchandise freight in less-than-carload quantities which the Railway then was and had been under an obligation to transport and which it would continue to transport whether we granted or denied the applications. Kansas City S. Transport Co., Inc., Com. Car. Application, 28 M. C. C. 5. There was no need for another motor carrier to furnish service such as that supplied by existing motor carriers which have no close relation to the operations of the Railway. Accordingly, petitioner was granted certificates subject to conditions which were imposed for the purpose of so limiting its service as to prevent it from engaging in motor vehicle operations unconnected with any rail service. The need for improvement in the rail service of the Railway not only forms the basis for the conditions imposed but is the basis upon which operating authority was granted to the petitioner, rather than requiring the Railway, if the improvement in its

service were to be accomplished, to utilize the service of existing motor carriers. Without this need for improvement in the rail service there would have been no public need warranting the granting of the certificate. There was no public need for another motor carrier in the field nor for the Railway, through petitioner, to engage in a new field of service.

If the District Court's decision is allowed to stand, a new all-motor carrier service is authorized which the Commission flatly states there is no need for and was not any need for at the time the certificates were granted to Transport. Motor truck transportation is a highly competitive business; the Congress has recognized that there should be no motor carrier service except where required by public convenience and necessity, and yet here we have the District Court, without any proof of the need for Transport to render motor carrier service in competition with the existing independent motor carriers, granting Transport that prerogative and privilege. The existing independent motor carriers had to prove the necessity for their service. It would be decidedly unfair to them for Transport to now be allowed to engage in unrestricted motor carrier service when the certificates granted to it were based upon a clear understanding and in fact a finding by the Commission that the service to be performed by Transport would not be com-

petitive with these independent motor carriers. Certainly the equities of the situation are with the members of this Intervenor and as shown above, the operations of the Transport are in contravention of the regulatory statutes. This being the case, the decision of the District Court should be reversed.

Respectfully submitted,

FRANK C. BROOKS,
Attorney.

October, 1950.

APPENDIX A

Excerpts from the Interstate Commerce Act

[Title 49, U. S. C.]

Combinations and Consolidations of Carriers

Sec. 5(2)(a-b-c) [*U. S. Code, title 49, Sec. 5(2)(a-b-c)*]

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

[i] for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

[ii] for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the pro-

posed transaction is situated, and also such carriers and the applicant or applicants [and, in case carriers by motor vehicle are involved, the persons specified in section 205(e)], and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

Terms and Conditions of Certificate

Sec. 208. (a) [U. S. Code, title 49, Sec. 308 (a)] Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204(a)(1) and (6); *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

Suspension, Change, Revocation, and Transfer of Certificates, Permits and Licenses

Sec. 212. [U. S. Code, title 49, Sec. 312] (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of

this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit or license: *Provided, however*, That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204(c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further*, That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of section 206, 209, or 211, or by virtue of the second proviso of section 206(a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of sections 211(c), 217(a), or 21[illegible]a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(b) Except as provided in section 5, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

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In the

Supreme Court of the United States

OCTOBER TERM, 1950

No. 38

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants,*

v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, *Appellee.*

No. 39

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., *Appellant,*

v.

THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, *Appellee.*

Appeals from the United States District Court for the Northern District of Texas

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PETITION FOR REHEARING ON BEHALF OF THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, APPELLEE

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PETITION FOR REHEARING ON BEHALF OF APPELLEE

To the Said Honorable Court:

The Appellee, Transport, respectfully suggests that the foundation of the majority opinion herein — the keystone of its well-rounded structure — is the proposition that the 1940 general Declaration of the National Transportation Policy, 54 Stat. 899, prevails over the apparently clear

and much more specific provisions of Sections 216(c) and 217(a) of the same Act. This premise is established by the declaration in the majority opinion in the *Rock Island* case (No. 25, page 15 of the opinion) that:

> "Sections 208, 216(c) and 217(a) with their general provisions do not in our opinion override the specific requirement of the National Transportation Policy that the inherent advantages of all modes of transportation be retained, or of section 5 that acquisition of motor routes by railroads shall require the above special findings and may be subject to special conditions."

Without intending contentiousness, Transport respectfully contrasts the pertinent provisions of the several sections:

National Transportation Policy:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; * * *."

Section 5:

"* * * If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, * * * it shall enter an order * * *."

Section 213:

"(a)(1) * * * If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest * * * it may enter an order approving and authorizing such * * * purchase * * * upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe."

Section 216:

"(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates * * * with other such carriers * * *."

Section 217:

"(a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation * * * in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, * * *."

In ordinary concept, the quoted provisions from Sections 216(c) and 217(a) would seem much more specific than the quoted portions of Sections 5 and 213 and the National Transportation Policy. With that concept, and following familiar rules of statutory construction, the proper interpretation of the Act would be that the Commission should be guided by the Declaration of National Transportation Policy, and could attach terms and conditions to its approval of purchase of certificates and to its issuance of certificates *within the specific requirements of other portions of the Act:* (1) motor common carriers shall be permitted to establish reasonable through routes and joint rates with other motor common carriers; and (2) shall publish tariffs containing their rates and file them with the Commission.

If the suggested interpretation is followed, obviously the Commission's current concept of "auxiliary and supplemental" requires revision because it conflicts with plain provisions of 216(c) and 217(a).

The interpretation of the Act in the majority's opinion can have unfortunate consequences extending far beyond the cases at bar and even the subject matter of this litigation. If language such as that quoted from the National Transportation Policy and Sections 5 and 13 is held to vest in a regulatory body the discretionary power to ignore provisions such as those quoted from Sections 216(c) and 217(a), either the authority of the legislative branch of the government is seriously curtailed, or it is confronted with a dilemma of considerable proportions. Transport disclaims intent to echo any hyper-conservative lamenta-

tions. It recognizes modern necessity for considerable Congressional delegation of legislative detail to administrative agencies under the guidance of general declaration of Congressional intent. However, if such general declarations are held to nullify any statutory precision which Congress sees fit to supply, the legislative branch must either be deprived of some of its constitutional and traditional authority, or it must forego such general declarations.

This dilemma is neither healthy nor necessary. There is no occasion for impatience in achieving the particular regulation of Transport which the Commission seeks. The public weal is not being endangered. Statutory channels are available for conventional approach to the problem by the Commission. If by chance the existing statutory channels are unduly awkward or inconvenient, Congressional amendment of the Act is an almost annual affair.

Disclaiming intent to quibble, Transport respectfully suggests that the meaning of "auxiliary and supplemental" originally and in later application, may not have been properly conceived in the majority opinion herein. (Pages 7-8.) The original meaning of restricting service to rail points is treated only in the aspect of the trial court's current interpretation. The *Commission's* intent in original use and in subsequent reuse of the term, however, was the question at issue. Considerable evidence was introduced on the point, and the trial court made a definite finding of fact on the Commission's intent. (R. 145-146.) Transport freely recognizes the propriety of this Court's reviewing those findings, but respectfully suggests that it is inappropriate to over-

rule them merely because the majority, as it said in the *Rock Island* opinion (page 21), cannot be sure what was in the Commission's mind.

Presumably in this case (as in *Rock Island*, page 22 of that opinion) the majority considers that a limitation of the character of freight authorized to be carried by the certificate would be a more drastic change than any proposed by the Commission's order here. But is changing permissive cargo more drastic than changing points between which any transportation at all can be performed? Transport's certificates Sub-1 and Sub-5 respectively authorize transportation between New Orleans and Shreveport, Louisiana, and Dallas and Abilene, Texas. The Commission's order (Condition No. 3) prohibits transportation New Orleans-Shreveport and Dallas-Abilene.

In the majority opinion herein (page 4) the basis for the Commission's action in reopening proceedings on Transport's certificates is misunderstood. They were not reopened in response to Transport's petition in connection with its certificate under Sub-11, but rather under a petition filed under procedural compulsion. (R. 208.) Shorthanded, the situation was that carriers engaged in certain practices were required to file tariffs (R. 10, 49), Transport did so with Commission approval (R. 83, 209) and later the Commission threatened withdrawal of this approval unless Transport filed a petition with respect to several of its certificates. (R. 59-60.) Properly understood, Transport is confident that the Court would not countenance such procedural cleverness to the extent of holding that Transport had the burden of proof in subsequent pro-

ceedings on the theory that it was the moving party. The proceedings were truly ex parte in character. The Commission had the duty of producing and considering evidence as a basis for its action. The ultimate question was whether Transport's operations unduly restrain competition adversely to the public interest. On this, proof of the nature of the operations without proof of the effect thereof on competition and the public interest, should no more suffice to restrict the certificates than should mere proof of proposed operations without proof of their effect on public interest suffice to authorize issuance of a certificate.

PREMISES CONSIDERED, Transport respectfully prays that the Court not issue its mandate herein until it has acted on Transport's Petition for Rehearing and that Transport's Petition for Rehearing be granted, and that the judgment of the trial court be affirmed.

Respectfully submitted,

J. T. SUGGS,
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Of Counsel:

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J. T. SUGGS.

March 12, 1951.

Certificate

The undersigned, of Counsel for Appellee, hereby certifies that the foregoing Petition for Rehearing is presented herein in good faith and not for delay.

A. T. SUGGS

Dallas, Texas,
March 10, 1951.